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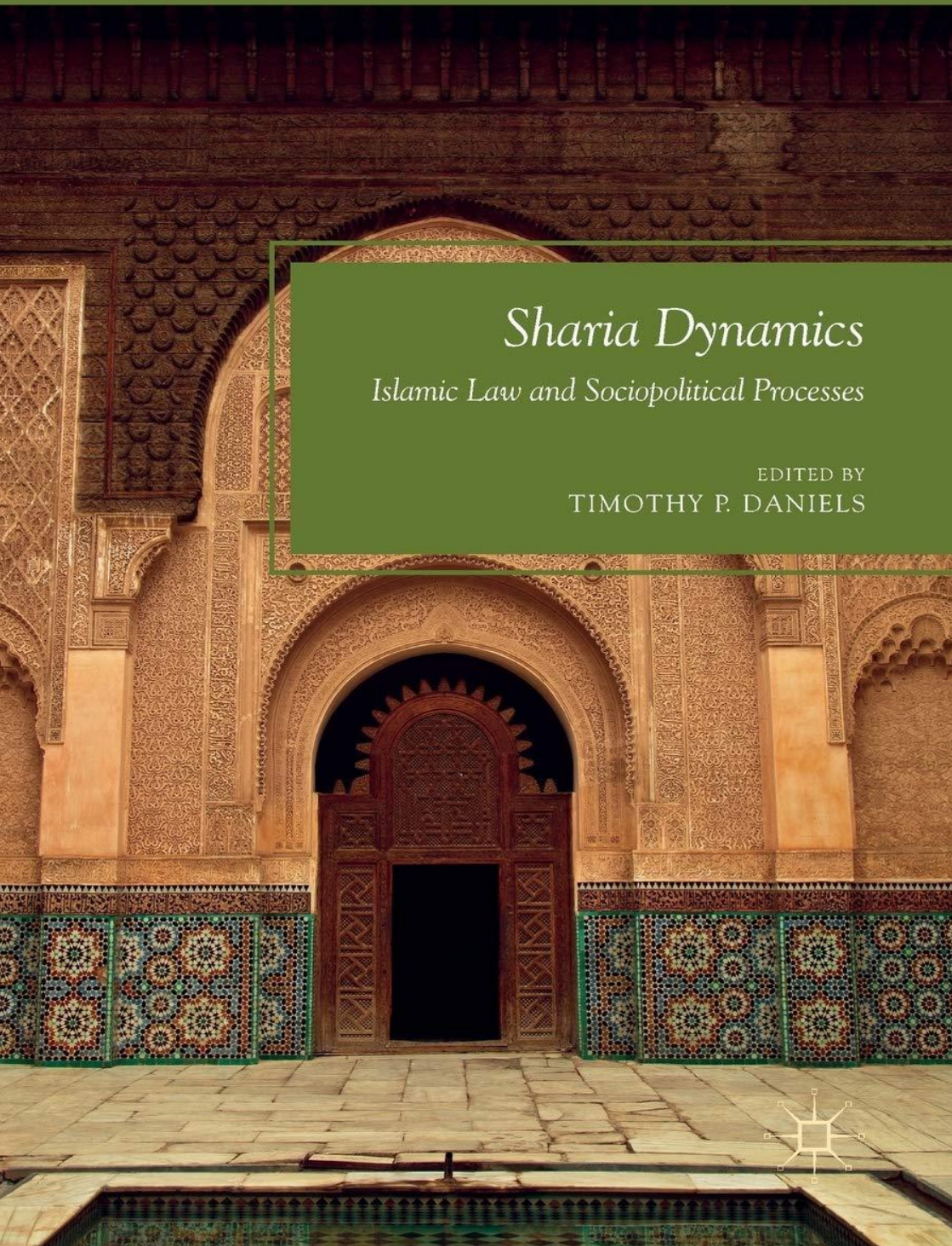

Sharia Dynamics

Islamic Law and Sociopolitical Processes

EDITED BY

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HOFSTRA

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Sharia Dynamics

Islamic Law and Sociopolitical Processes

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CHAPTER 1

Introduction: Sharia Dynamics and the Anthropology of Islam

Timothy P. Daniels

Sharia (Arabic: *Sharīʿa*) is a lexical item with multiple meanings, a core metaphor, and a conglomerate of cultural models. In a theological sense, it refers to Islamic law and ethical norms, the all-encompassing Way sent by God in the Qur'an and exemplified in the practices of the Prophet Muhammad. It also means, in a metaphorical sense, "the path to the oasis." Just as the oasis is the key to survival and success in a desert environment, sharia is the key to survival and success in this world and the world hereafter. Sharia is the domain of expert knowledge, such as that of the sharia experts on bank committees in Malaysia and the fatwa council of the Organization of Islamic Cooperation (OIC) in Saudi Arabia. It is also the domain of diffuse socially distributed knowledge, such as that of the worshippers in the mosques in Kota Kinabalu, Sabah, and the factory women of Fes, Morocco, who told Laetitia Cairoli (2011) that they tried to observe the *ḥudūd* or ethical limits as they passed through the streets between factory and home. Sharia also enters into much spoken and written discourse, and symbols associated with it evoke multiple meanings and emotions among Muslims and non-Muslims alike. As such, sharia is an important topic for the anthropology of Islam and the anthropology of religion in general.

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However, examining productions of sharia poses many questions for the anthropology of Islam. Should we conceive of these productions as part of an Islamic "discursive tradition" that relates itself to the founding texts or as new discourses or performances to be understood only in terms of our interlocutor's interpretations and knowledge? How should we approach the articulation of these productions of sharia with other concepts and their embodiment in practice? How are they related to modernity, secularism, and political Islam? The way this volume helps us to answer these questions charts a new direction for the anthropology of Islam.

Moving Beyond Dichotomy of Discursive Practice/ Interpretive Frameworks

The anthropology of Islam, a subfield of the anthropology of religion, has been an arena for contending approaches over the last several decades. While sharing the disciplinary-wide commitment to relativistic, holistic, and comparative perspectives, anthropologists of Islam have debated what the object of study should be, what Islam is, and how best to study it (el-Zein 1977; Gilsenan 1982; Asad 1986; Varisco 2005; Marranci 2008; Kreinath 2012). One popular approach posits that researchers should study the ideas, feelings, practices, interpretations, and discourses of Muslims as they produce particular *islams*. There is no single "real" or "essentialist" Islam based in religious texts, Islamic history, and the practices of exemplary individuals according to this view. "Islam" is treated as a "word that identifies varying relations of practice, representation, symbol, concept, and worldview" (Gilsenan 1982) or a "map of discourses on how to 'feel Muslim'" (Marranci 2008, 8). Textual sources, Islamic history, and theological stances are placed outside the purview of such studies and are only considered to the extent that they enter into the interpretations and practices of Muslims. Marranci even goes so far as to state that "the Qur'an, the hadiths, and the arkāna al-islam [pillars of Islam] would remain mute and without meaning if there were no minds, emotions and feelings informing them and making them unique through the individual professing himself Muslim" (2008, 29). Thusly, diverse kinds of Islam are produced in society, some by contemporary revivalist movements and others by state systems, and embodied by individuals from various backgrounds (Gilsenan 1982; Marranci 2008).

In contrast, a major contending approach posits that Islam is a "discursive tradition that includes and relates itself to the founding texts of the

Qur'an and the *hadith*" (Asad 1986, 104). This heterogeneous "tradition" has a past that articulates with present conditions, practices, and institutions and instructs Muslims of the purposes and proper performance of practices (ibid.; Mahmood 2005; Deeb 2006). "An Islamic discursive tradition … is therefore a mode of discursive engagement with sacred texts, one effect of which is the creation of sensibilities and embodied capacities (of reason, affect, and volition) that in turn are the conditions for the tradition's reproduction" (Mahmood 2005, 115). According to Asad, the proper place to begin an anthropological study of Islam is with focusing on an "instituted practice into which Muslims are inducted *as* Muslims." People with varying degrees of training and expertise may instruct others in these instituted practices. What is important from this perspective is not the level of the instructor's knowledge, but rather the fact that the practice is "authorized by the discursive traditions of Islam" (Asad 1986, 105). In addition, this approach emphasizes the importance of studying the reasoning and argumentation within the tradition and the connection of particular "orthodox" interpretations with contexts of power relations (ibid.; Mahmood 2005, 116). Moreover, Asad argues that the anthropologist of Islam should be concerned with the roles Muslims *and* non-Muslims play in these dynamic processes of power.

I sympathize with both Asad's effort to focus on contemporary articulations with an Islamic "discursive tradition" and Gilsenan's and Marranci's concern with avoiding essentialism and not designating one particular form of Islam as the "real Islam." This volume can be seen as an attempt to combine aspects of both of these perspectives into forming a new approach to the anthropology of Islam. There are two key ways in which we consider the "discursive tradition" and "multiple interpreted/embodied Islams" contention can be viewed in a new light. First, instead of viewing Islamic texts as mute and meaningless without human interpreters, it would be useful to note that these texts are embodied with knowledge from which particular Muslims and collectivities construct diverse mental representations. Izutsu's (1966) detailed semantic study of ethical concepts demonstrates there was a shift in the underlying knowledge associated with key Arabic terms used in the Qur'an. Many of the terms of pre-Islamic Arabic were given new meanings that reflected the transformed monotheistic worldview of the emergent Islamic tradition. The knowledge embedded in the Qur'an and sayings and practices of Prophet Muhammad and in other relevant texts is *tradition* and *real Islam*, as are the diverse cultural models, mental representations, and embodied prac-

tices of contemporary Muslims. Treating Islamic texts as meaningful in and of themselves, and as an integral part of studying religion in practice is in accordance with the relativistic perspective that directs anthropologists to try to understand beliefs and practices from local perspectives (Bowen 2014, 8; cf. Bowen 2012, 4). In contrast to practitioners of some other religious traditions, Muslims generally emphasize religious texts as part of their religion. Moreover, it has also been a longstanding characteristic of anthropological theory, including structural functionalism, historical particularism, and structuralism, to consider religious texts as a significant aspect of the study of religion.[1] Recognizing that the Qur'an, hadith, and related textual sources embody knowledge is especially relevant to the study of sharia, because Muslims, directly or indirectly, look to these sources as a basis for their understandings of divine directives.

Second, Muslims, drawing upon knowledge embedded in religious texts, form diverse mental representations, cultural models, and embodied practices, producing a variety of local *Islams*. These local versions of Islamic concepts and practices connect, combine, and interpenetrate with other ideas and behavior in local social contexts. There are multiple Islamic mental representations and combinations within any one society and these are constructed, reproduced, and transformed through socialization processes and human agency. From an anthropological analytic perspective, none of these local varieties of Islam are any more real or truly Islamic than any other. However, we should not be surprised that proponents of particular varieties deem their version to be more Islamic than others. These facts should be an integral part of our analysis. In the studies in this volume, diverse conceptions of sharia coalesce and enmesh with other cultural models, such as those pertaining to race, gender, nation, and human rights. Proponents of some of these varieties have considered others to be less truly Islamic or even, at times, to be infidels. In this volume, we try to remain outside of the fray of these contentious castigations, and to look instead to the role such denigrating evaluations play in sociopolitical dynamics.

Embodied Practice, Habitudes, and Sustained Cultural Analysis

In addition to assisting us to produce an anthropology that goes beyond the false dichotomy of Islam as a discursive tradition and multiple interpretative/embodied frameworks, *Sharia Dynamics* (this volume) helps to refine anthropological approaches to embodied practices and complex

articulations of discourses and cultural knowledge. In order to properly appreciate the direction taken in this volume, we must first consider the popular trend toward examining religious practices in terms of habitudes and self-cultivation.

In his chapter "On Discipline and Humility in Medieval Christian Monasticism" in *Genealogies of Religion* (1993), Talal Asad criticizes anthropologists' focus on ritual symbolism and rituals as communicating messages, codes, and meanings and proposes a different approach that would concentrate on disciplinary practices, especially the "multiple ways religious discourses regulate, inform, and construct religious selves" (p. 125). While he included British and French theoretical perspectives in his critique, Asad trains his attention on American symbolic and interpretative perspectives and their two major proponents: Victor Turner and Clifford Geertz. The works of these two scholars are still popular and continue to exert a strong influence on the anthropology of religion today. Asad argues that reading the meanings of ritual symbols is inadequate for understanding the cultivation of moral sentiments and virtues.

> The problem that has, in my view, received inadequate attention may be stated as follows: although the formation of moral sentiments is dependent on a signifying medium, we cannot read off the formation from the system of significations that may be authoritatively identified and isolated as a distinctive semiotic phenomenon. The reading is a product of social discipline, and the text, the symbol, the rite, is the product of varying disciplined performers who discourse with one another in historically determinate ways. (1993, 131)

Thus, Asad sidelines the concentration on "semantics" and "semiotics" of ritual symbols and stresses examining authoritative discourses as programs for forming moral dispositions or habitudes. In this exemplary work, Asad reads the written texts and rites of a few influential medieval Christian theologians and leaders as disciplinary practices aimed at forming obedient Christian monks.

In subsequent works, Talal Asad and others have developed this approach applying it to body techniques and cultivation of the self within Islamic discursive traditions. Following some fine cultural analysis of reconfigurations of Islamic law and ethics in Egypt, including a description of the coimbrication of *sharia* and secular ideas in the work of Egyptian reformers, Asad, drawing upon Marcel Mauss and Pierre Bourdieu, recommends

concentrating on body techniques and the *habitus* of practice. Asad writes (2003, 251–252):

> The concept of *habitus* invites us to analyze any assemblage of embodied aptitudes not as systems of meanings to be deciphered. In Mauss's view, the human body was not to be regarded simply as the passive recipient of "cultural imprints" that can be imposed on the body by repetitive discipline—still less as the active source of "natural expressions" clothed in local history and culture—but as the self-developable means by which the subject achieves a range of human objects—from styles of physical movement … through modes of emotional being … to kinds of spiritual experience.

Here again, Asad casts off popular symbolic and interpretative perspectives in favor of focusing on the human body as a resource for programs of self-cultivation of body techniques, emotional virtues, and spiritual experiences. He reads Marcel Mauss's famous essay "Techniques of the Body" as supportive of his own approach to embodied practices. However, in contrast to Asad, Mauss (1973, 74) described techniques of the body as multidimensional phenomena in which social, psychological, and biological elements are "indissolubly mixed together" and that require a multifaceted study. In particular, he does not suggest moving directly from influential discourses to techniques of the body without engaging in "psychological" or cultural analysis. Nevertheless, some contemporary anthropologists of religion are following Asad's tack of examining practice in terms of habitudes and cultivation of the self. For instance, Mahmood (2005) and Hirschkind (2006), informative studies of the women's mosque movement and cassette sermons of the Islamic revival in Egypt, both focus on cultivation of the body and self through ethical practices. They eschew any sustained concern with describing and analyzing interpretative structures, and the ways in which the ethical practices of giving mosque lessons and listening to cassette sermons embed cultural knowledge. Mahmood (2005, 140) collapses the complex ethical ideas and emotions of fear, hope, and love stressed in many mosque lessons into pious action. Similarly, Hirschkind (2006, 31), while noting many diverse ideas of the revival movement, opposes his concentration on how the aural dimension of "sensible activities" inculcates moral dispositions to a "vision of disembodied reason." However, the problems of a disembodied mind and mindless or "pure mimesis" (see Lambek 2000) can be rectified within a cultural anthropology that situates shared representations

and models within communities of practice, while also inferring cultural knowledge from ethical practices and analyzing the embodiment of pious action and material artifacts (see Keller and Keller 1996, 159–179).

In particular, rather than eschewing cultural analysis due to the shortcomings of extant symbolic and interpretative perspectives, we can formulate more adequate methods of representing cultural knowledge. The main problem is not that Clifford Geertz and Victor Turner, and those following their approaches, were trying to provide cultural analysis of symbols and ritual actions, but it was that their theoretical frameworks were in need of significant refinement. Unfortunately, even today, many of their ideas are often followed in an uncritical fashion. For instance, Clifford Geertz famously declared that religion is a system of symbols and that a symbol is "a vehicle for a conception—the conception is the symbol's 'meaning'" (1973, 91). The principal task for a cultural anthropologist from his perspective was to provide a "thick description" of the shared public meanings of social actions. To the contrary, ethnographic research informs us that symbols evoke multiple meanings and conceptions, sometimes with widely shared conventional referents and at other times there appear to be no set referent at all (F.K. Lehman 1997). Cultural analysis also requires that we recognize that knowledge is both public and private, since acquisition, memorization, and modification of conceptions presuppose individual minds (Boyer 1993, 12). Despite producing elaborate descriptions of the "fan of referents" or multiple meanings of symbols, Victor Turner's (1964, 1965) approach to religious symbolism also tended to interpret symbols and metaphors as the main, if not sole, constituents of religious worldviews. However, I think that ethnographic research, including Turner's own descriptions of the "three rivers" in Ndembu rites of passage, suggests that symbols and metaphors are combined with complex concepts and knowledge structures in order to constitute broadly encompassing conceptions of reality.[2] The multidisciplinary contributors to this volume, even while bringing their own specific theoretical and methodological perspectives, all work to sustain analysis of complex cultural knowledge while avoiding the pitfalls of earlier symbolic and interpretative approaches.

Despite its drawbacks, this popular trend of stressing habitudes of practice in the anthropology of Islam has made significant contributions to the embodiment of ethics, subjectivities, and into processes of subject formation. However, this approach to embodied practice via the episteme *habitus* cuts off cultural analysis, or, even worse, dissolves cultural knowledge

into mindless practice. Maintaining an analytic distinction between practice and knowledge (and of course context) and sustaining cultural analysis will help us to produce a more illuminating anthropology. While habitudes may suffice for more unified and singular dispositions and embodied selves, this is not what we often find in ethnographic contexts. For instance, Cairoli tells the stories of young Moroccan factory women who perform "modern" femininity sharing and applying makeup and lipstick during lunch breaks at the factory. Some of them also perform "public" piety in other contexts through wearing long robes, *djellaba*, and headscarves and praying and fasting. Similarly, Khosravi (2008, 164) introduces us to Shideh, a female leader of a Sufi group in one of the middle-class neighborhoods of Tehran, who performs a "chic Sufism" in which she brings together "self-abasement" and "self-assertion," embodying "traditional" piety and "the secular." These sorts of shifting performances of self across social contexts and embodiment of different or merging senses of self are not uncommon. In fact, Saba Mahmood, in her fine study *Politics of Piety* (2005, 120–121) notes the "very different configurations of personhood can cohabit the same cultural and historical space, with each configuration the product of a specific discursive formation rather than of the culture at large." Therefore, instead of collapsing cultural knowledge and social context into the habitudes of practice, it would be more productive to work back and forth from embodied practices to knowledge and to relations of power and other aspects of context. Taking this new direction of producing anthropology of Islam through sustained cultural analysis can contribute to our understanding of complex articulations of ideas, varying embodiments in practice, and productions of dispositions.

Sources of Islamic Jurisprudence and Sociopolitical Processes

Some earnest consideration must be given to the complex concepts, reasoning methods, and principles of Islamic jurisprudence (*fiqh*) that Muslims are drawing upon, reshaping, and redefining in contemporary sociopolitical processes. In the postprophetic formative era (until early tenth century), jurists emphasized individual legal reasoning (*ijtihād*) deploying methods that varied across the expanding terrain of Muslim communities. Two of the main contending "tendencies" were the *Ahl al-Raʿi* (Supporters of Opinion), famous for relying on their reason, and

the *Ahl al-Athar* (Supporters of Narration), who generally preferred relying even on "weak" narrations over analogical reasoning and principles gleaned from general expressions in the Qur'an (Auda 2008, 63–64). Interrelated to these legal tendencies were Mu'tazilī/Ash'arī theological (*kalām*) debates on ethics in which the former claimed an objective existence to ethical values which can be known to people, while the latter "taught these values may be defined only in terms of what God decrees" (Johnston 2004, 236). It is important to note that during the classical period (early tenth to early thirteenth century), Ash'arī's theological perspective, including the position that ethical values can only be ascertained through the revelation of Allah in the Qur'an and Sunna (prophetic tradition), became dominant and underpinned the legal theories of the Sunni schools of jurisprudence. Moreover, the formation of Sunni schools and their growth of clear boundaries, doctrinal canons, and hermeneutic methodologies marked the shift toward the hegemony of legal conformism (*taqlīd*), all part of an "epistemic shift whereby there was an increasing emphasis on legal determinacy" (Ibrahim 2015, 37).

However, rather than viewing this shift to a *taqlīd* episteme as a closure of *ijtihād*, Ahmed Fekry Ibrahim, taking a cue from Sherman Jackson, posits an *ijtihād-taqlīd* continuum "with *ijtihād* dominating until around the twelfth century and *taqlīd* dominating until the nineteenth century" (ibid., 22). Muslim political elites and jurists stressed more legal determinacy to achieve legal regularity and stability in the context of expanding and centralizing states. Ibrahim argues that more flexibility was introduced into Islamic law with the contestation over, but gradual acceptance of, selecting the less stringent juristic position within and across schools (*tatabbu' al-rukhaṣ* or *takhayyur*) and combining two juristic opinions within the same legal transaction (*talfīq*), practices included in his conceptual category *pragmatic eclecticism*. These practices, Ibrahim asserts, take place under the auspices of legal conformism rather than out of attempts to directly survey scriptural sources on a particular issue. However, more research needs to be conducted on the shift of Sunni schools of law opinions about the legitimacy of pragmatic eclecticism from premodern to modern times. It appears these practices became more widely accepted in the major Sunni schools in modern times, especially under colonial influence and the drive to formulate law for modern nation-states. Omer Awass (Chap. 2) offers a more extensive discussion of institutional and discursive changes in sharia wrought by colonialism. Ibrahim demonstrates that diverse social actors, including elites and subalterns in seventeenth- and eighteenth-century

Egyptian Ottoman courts, twentieth-century Egyptian legislators partially codifying Sharia-inspired family laws, and twentieth- and twenty-first-century reformers and activists framing a vision of an Islamic state, utilized pragmatic eclecticism to achieve their objectives. Minhaji (2008, 305) notes that the Indonesian government, in a process overseen by the Department of Religious Affairs, which involved collaboration with Muslim scholars and institutions, enacted the *Compilation of Islamic Law in Indonesia* that deploys the principle of *takhayyur* in many of its laws. This legal act passed in 1991, near the end of President Suharto's regime, was part of a strategy to bolster state legitimacy in the context of a deepening multidimensional crisis (Daniels 2007, 242). Therefore, it is apparent from these cases that the same *fiqh* tools can be used to construct a wide variety of pragmatic, ideological, and sociopolitical edifices.

This is also the case for several other principles, sources, and reasoning methods in Islamic law. All traditional schools of law considered the Qur'an and Sunna to be the primary sources of jurisprudence and developed various script-based linguistic methods to derive rulings from them (see Auda 2008, 88). The vast majority of jurists have also recognized *ijmaʿ* (consensus) and *qiyās* (analogy) as major legal sources. There are several secondary sources of legislation, including *raʿi al-ṣaḥabi* (companion's opinion), *istiḥsān* (juridical preference), *sadd al-dharāʾiʿ* (blocking the means), *maṣlaḥah* or *istiṣlah* (public interest, benefit), and *al-ʿurf* (custom), about which the traditional schools of law held different positions. For instance, Mālikīs, Ḥanafīs, and Ḥanbalīs prioritized companion's opinions over consensus of companions or scholars, while Shāfiʿis prioritized consensus of companions over *raʿi al-ṣaḥabi*. Mālikīs and Ḥanafīs supported a fundamental rule that made *ʿurf* independent evidence, while Shāfiʿis and Ḥanbalīs viewed *ʿurf* as a consideration in the application of rules based on other evidences and not as standalone evidence (ibid., 130–131). These four main Sunni schools of jurisprudence viewed analogical reasoning as a legitimate source of legislation, but only Mālikīs held that a fundamental rule based on analogical reasoning could invalidate an authentic single-chained hadith. Similarly, Shāfiʿis and Ḥanafīs considered *maṣlaḥah mursalah* (unrestricted interests)—benefits not mentioned in the script—to be an invalid source of legislation, whereas Mālikīs and Ḥanbalīs accepted them as legitimate as long as they did not contradict the Qur'an, prophetic tradition, consensus, and analogical reasoning. Nevertheless, Shāfiʿis included *maṣlaḥah* within their procedures of ana-

logical reasoning and Ḥanafīs included it in their *istiḥsān* (ibid., 120–122; Opwis 2005, 193).

With the renewed emphasis on *ijtihād*, many twentieth- and twenty-first-century reformers and activists used *maṣlaḥah* as a key concept, often linked to models of *maqāṣid al-sharīʿa* (objectives and purposes of sharia), within sociopolitical processes. Jamāl al-Dīn al-Qāsimī (1866–1914) and Muḥammad Rashīd Riḍa (1865–1935), two early-twentieth-century reformers, drew upon Ḥanbali jurist Najm al-Dīn al-Ṭūfī's (d. 716/1316) model of *maṣlaḥah* as they called Muslims to unite around a true, purified Islam and to strengthen themselves against the onslaught of European colonialism (Opwis 2005, 198). Al-Ṭūfī's model, with its departure from traditional legal methodology and emphasis on a rationally discernible "public interest," fit well into their Islamic modernist project and efforts to counteract secular reformer's discourse about the backwardness of Islamic law and its incompatibility with rational sciences and modern society. During the mid-twentieth century, Lebanese jurist Ṣubḥī Rajab Maḥmaṣānī (1327–1406/1909–1986), Moroccan jurist ʿAllāl al-Fāsī (1328–1394/1910–1974), and Sudanese reformer Maḥmūd Muḥammad Ṭāhā (1327 or 1329–1405/1909 or 1911–1985) utilized Mālikī jurist Abū Isḥāq Ibrāhīm b. Mūsā al-Shāṭibī's (d. 790/1388) model of *maṣlaḥah* and its system of immutable universals and changing particulars in the law. Maḥmaṣānī and al-Fāsī used al-Shāṭibī's model to demonstrate that Islamic law could serve as a legal system for a state legislature and modern nation-state, while Ṭāhā gained inspiration from it for his vision of a society based on equality, socialism, and democracy (ibid., 201–208). Similarly, Rāshid al-Ghannūshī, a Tunisian political activist in the 1980s, drew upon al-Shāṭibī's models of *maṣlaḥah* and *maqāṣid al-sharīʿa* in his drive for achieving freedom, justice, and human rights within the establishment of an Islamic state (Johnston 2007, 171–176). On the other hand, Egyptian scholar ʿAbd al-Wahhāb Khallāf (1305–1375/1888–1956) and Syrian scholar Muḥammad Saʿīd Ramaḍan al-Būṭī (b. 1347–1348/1929) relied on Abū Ḥāmid Muḥammad al-Ghazālī (d. 505/1111) and Fakhr al-Dīn al-Rāzī's (d. 606/1210) model of *maṣlaḥah* and *maqāṣid al-sharīʿa*, with its traditional methodology of incorporating *maṣlaḥah* under the rubric of analogy, in their respective projects aimed at expanding the increasingly circumscribed role of Islamic law in modern nation-states (Opwis 2005, 208–220).

In the early twenty-first century, several Muslim scholars of law and philosophy, engaging in *ijtihād* in contemporary sociopolitical processes, have produced some new approaches to the sources of Islamic law. Tariq Ramadan, a popular philosopher, has written several books calling for reform and renewal of Islamic law and for Muslims in Europe and other Western societies to actively participate as faithful believers in public life in secular societies. In his recent book, *Radical Reform: Islamic Ethics and Liberation*, Tariq Ramadan criticizes an "adaptation reform" that passively accepts changes in the world and merely aims to change Muslims to fit in with the prevailing order. He proposes a "transformation reform" that "aims to change the order of things in the very name of the ethics it attempts to be faithful to, in other words, to add a further step going from the texts to the context to act on the context and improve it, without ever accepting its shortcomings and injustices as matters of fate" (2009, 33). Ramadan contends that the sources of Islamic jurisprudence must be expanded to include knowledge from the human and exact sciences, thereby bringing text scholars (*ʿulamāʾ an-nusūs*) and context scholars (*ʿulamāʾ al-wāqiʿ*) together to establish the higher objectives and ethical goals (*maqāṣid al-sharīʿa*) of Islam's general message. The contribution from social scientific studies of "contingent social and cultural realities" would be crucial in taking into account people's common good (*masālih an-nās*) and customs (*ʿurf*) within the process of formulating and implementing rulings (ibid., 97–98).

Similarly, Jasser Auda, a philosopher with a multidisciplinary academic background, contends that jurists must consult with specialists in the natural and social sciences over a number of issues in which law and science overlap. While these are important recommendations, ethnographic research needs to be conducted to determine to what extent contemporary jurists are *already* drawing upon scientific studies before issuing rulings (see Chap. 2). In his book, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*, Auda presents Islamic law as a cognitive, holistic, open, and multidimensional system with "purposefulness" as its main feature, which separates his approach from the literalism of many modernist reformers (2008, 192–245). Auda writes:

> I argue that the realization of the purposes/*maqāṣid* of the Islamic law is the core objective of all fundamental linguistic and rational methodologies of ijtihad, irrespective of their various names and approaches. Moreover, the realization of *maqāṣid*, from a systems point of view, maintains open-

> ness, renewal, realism, and flexibility in the system of Islamic law. Therefore, the validity of any ijtihad should be determined based on its level of "purposefulness," i.e., the level of its realization of *maqāṣid al-sharī'a*. (ibid., 244–245)

He attempts to build upon classical legal theory, contemporary reinterpretations, and postmodern critiques of tradition and modernism. Auda supports contemporary reinterpretations of classic meanings of *maqāṣid* that turn the higher objective of "preservation of religion" into "freedom of faiths" or "freedom of belief," "preservation of honor" or "preservation of the soul" into "preservation of human dignity" and "protection of human rights," "preservation of offspring" into a family-oriented theory, and "preservation of wealth" into "social assistance," "economic development," and "wellbeing of society." This raises the question for contemporary Muslims whether these new sorts of reinterpretations should be accepted over the established traditional meanings. Moreover, given the generally low ranking of Muslim-majority societies on the Human Development Index, Auda recommends that Muslims view "human development" as a "prime expression of *maṣlaḥah* (public interest) in our time, which *maqāṣid al-sharī'a* should aim to realize through the Islamic law" (ibid., 25).

The *maqāṣidi* strategies and rational approaches of Ramadan, Auda, and other scholars are important responses to contemporary intellectual, economic, and sociopolitical challenges facing Muslim-majority societies and Muslim minorities in various regions of the world (see also Black et al. 2013).[3] They present impressive frameworks holding out possibilities for Muslims to use Islamic legal tools as they face exclusions, racism, and intolerance in modern secular societies, and repression, poverty, and civil strife in failing authoritarian nation-states. Nevertheless, there are also Muslim scholars and activists performing *ijtihād* through directly consulting Islamic foundational texts and reaching decisions more in line with traditional rulings. For instance, Lubeck (2011, 275–276) reports that "ijtihad-minded restorationists" in northern Nigeria favored implementing Islamic law, continuing funding of the religious police, and challenging "the misguided intrusion of international NGOs into Muslim women's rights." On the other hand, more "conservative" *fiqh*-based strategies are still being drawn upon and reshaped in many civil society institutions and political Islamic movements responding to current needs and circumstances (see ibid., 262–265; Daniels 2009; Zaman 2011a, b). These tra-

ditional strategies are attractive to Muslims from various positions in local and global society. The aim of this volume is to describe and analyze various understandings and applications of sharia and some of their ramifications in sociopolitical processes, rather than to prescribe the approaches we deem to be most proper and fitting for the "modern" world.

Modernity, Secularism, and Political Islam

In this volume, we examine cultural knowledge and practice, with sustained cultural analysis, in a range of local, regional, and global contexts and processes. Contributors investigate *sharia dynamics*—the role discourses and practices of sharia play in sociopolitical processes—in Malaysia, Indonesia, Pakistan, China, Tunisia, Nigeria, the United States, and the International Islamic Fiqh Academy (IIFA) of the OIC. These studies include discussions of entanglements of sharia within processes of reforming gender relations, nation building, formulating political oppositions, encountering transformed postcolonial conditions in Muslim-majority societies, forging movements for sociopolitical change, and negotiating racial and religious diversity, Muslim identity, and minority status. Moreover, many of these dynamic processes are connected to, or embedded within, modernity, secularism, and political Islamic projects.

Indeed, a major contribution of this volume is the way we explore articulations of sharia to varieties of modernity, secularism, and political Islam. There is a growing literature on Muslim responses, appropriations, and productions of various modernities, secularisms, and forms of political Islam. Many scholars have noted the power of Western modernity and the proliferation of multiple modernities in non-Western societies, noting the *spatial* dimension of modernities and their unevenness. Wael Hallaq (2004) and Talal Asad (2003) have underscored the hegemonic influence of Western modernities and their transformation of Muslim precolonial legal institutions given unequal power relations. Several scholars have contributed to our insights into the spatial dimension of modernities in Muslim societies (Peletz 2002; Deeb 2006; Özyürek 2006; Khosravi 2008; Daniels 2009) and non-Muslim societies outside of "the West" (Liu 2011; Wallis 2013). Nielsen and Christoffersen (2010) examine the dialogue and encounters between Islamic and European intellectual and legal traditions. Now, scholars are paying more attention to the *temporal* dimensions. For instance, Esra Özyürek (2006) not only notes that different hegemonic Western modernities impacted Turkish society over the

course of the twentieth century but also contrasts the Turkish state-level modernity of the earlier twentieth century with the late twentieth-century production of market-driven modernity. She suggests that political Islamic parties were eventually able to dominate electoral politics due to the way they contested the memory of Ataturk and embraced neoliberal capitalist modernity. Cara Wallis (2013), Shao-hua Liu (2011), and others have recognized the temporal shift from socialist modernity to neoliberal capitalist modernity in China. In addition, *Sharia Dynamics* also discusses secular projects, which are integral to some modernities and oppositional to others, in terms of varieties of secular political ideologies, concepts, and secularization (cf. Asad 2003).

Operating with a broad conception of political Islam, contributors to this volume also describe and analyze articulations of sharia with many kinds of political endeavors. As Edward E. Curtis IV (2014, 113) notes: "Today political Islam can be found across the globe as Muslims utilize Islamic traditions as resources for constructing their nations' constitutions and shaping their legal systems, among other political activities." Here, forms of political Islam discussed include state projects, political parties, civil society organizations, Islamic scholars' councils and fatwas, reformist campaigns, and revival movements.

Multidisciplinary Methodologies and Outline of Volume

This volume contributes to some recent multidisciplinary collections of studies of sharia in Indonesia, Africa, Europe, and some parts of the Middle East. Feener and Cammack's edited volume *Islamic Law in Contemporary Indonesia* (2007) contains work from scholars of history, religion, anthropology, sociology, and law that discusses sharia in legal thought and institutions in Indonesia. Likewise, Nielsen and Christoffersen's edited volume *Shariʿa as Discourse: Legal Traditions and the Encounter with Europe* (2010) pulls together scholars of hermeneutics, philosophy, and law to study interactions of Islamic and European legal traditions in theory and practice in several European and Middle Eastern societies. Robert W. Hefner's edited volume *Shariʿa Politics: Islamic Law and Society in the Modern World* (2011) presents the important work of scholars of political science, international affairs, anthropology, sociology, religious studies, and history concentrating on the place of sharia perspectives and practices

in modern politics in eight Muslim-majority societies: Saudi Arabia, Egypt, Iran, Turkey, Afghanistan, Pakistan, Nigeria, and Indonesia. Chesworth and Kogelmann's collection *Sharīʿa in Africa Today* (2014) draws upon the work of scholars of anthropology, political science, religion, and communication that investigates contemporary sharia debates in Nigeria, Sudan, Kenya, and Tanzania. Similarly, this *Sharia Dynamics* volume contains work from scholars of anthropology, religion, history, law, communication, and media. Contributors draw upon data collected through a variety of methods, including participant observation, interviewing, and collecting fatwas, media reports, historical reports, legal documents, and spoken and written discourse. This trajectory of bringing together multidisciplinary perspectives and methods adds greater depth and broader understanding to the study of sharia.

The chapters published here investigate and discuss a range of issues that I have organized into four broad categories based on major themes although there are some important overlapping threads. At many points throughout this volume, topics and ideas are presented that will be of considerable interest to students and researchers of Islamic studies, comparative religion, global economics, postcolonial politics, international relations, and women's studies. Chapters in the first part focus on reproductions and reevaluations of traditional Islamic legal doctrines in response to contemporary challenges and in light of different historical and institutional trajectories. In Chap. 2, Omer Awass provides an overview of the development of a distinct Islamic legal tradition, which he views as part of the broader discursive tradition, and its transformation during the colonial period. After a historical overview, Awass analyzes several IIFA scholars' fatwas pertaining to abstract rights, Islamic stocks, endowing shares, health insurance, and international trade. He demonstrates the manner in which IIFA scholars are issuing fatwas engages with tradition but brings the concepts of *maṣlaḥah, ʿurf, maqāṣid al-sharīʿa* to greater prominence, thereby loosening a strong hermeneutic link to the literalism of classical legal theory and reaffirming certain aspects of twentieth-century reformist agendas. Omer Awass points out OIC scholars' contemporary emphasis on these *fiqh* concepts indicates their greater reliance on contextual factors, and suggests the emergence of new hybrid modes of interpretation that combine commitments to preestablished legal norms and innovative use of legal rationale. He draws our attention to the fact that they are producing these interpretations, within a project of renewal of Islamic law, as part of a response to transformed

and constantly changing postcolonial contexts. Awass asserts that this case demonstrates how "remarkably adaptive" traditional Islamic legal principles are as Muslim scholars continue to draw upon them to face ongoing historical disruption.

Najib Ahmad Burhani, in Chap. 3, examines fatwas and debates about the self-immolation of Mohammad Bouazizi and others protesting the oppressive conditions and governments of the Middle East and North Africa. Describing the contrasting status of martyrdom and suicide in the Islamic discursive tradition, Burhani informs us that while dying in the struggle to defeat tyrants and unjust rulers earned one the status of martyr, suicide was strongly prohibited. In keeping with this legal tradition, many Islamic scholars, using various forms of media, declared that Bouazizi's act of self-immolation was suicide rather than an act of martyrdom. Yusuf Qaradawi's sympathetic statements stood out amid widespread scholarly condemnation. However, Burhani demonstrates that the people of Tunisia considered Bouazizi to be a nationalist martyr despite the edicts of religious scholars and infers the growth of secularism and civil religion as people seek interpretations and perspectives that resonate with the psychosocial feelings of those suffering under the weight of corrupt and repressive regimes. Rather than top-down inculcated techniques of the body, he argues that the people of Tunisia created their own techniques through the difficult realities of their everyday lives, techniques that gave a special meaning to Bouazizi's death.

Robert W. Hefner, in Chap. 4, contends that the popular sharia imaginaries in Indonesia reflect the strong influence of two key organizational and epistemic contingencies: the history and content of Muslim education and the extraordinary flowering of Islamic social welfare associations. In contrast to the tenth-century *fiqh*-centered *madrasa* education in the Middle East, Islamic schools with a legalistic disposition only grew in the nineteenth and twentieth centuries in Indonesia and much of Southeast Asia. Here, Islamic normativity tended to be focused on Muslim kings, Qur'an memorization, prophetic biographies, Islamic spirituality, and moral edification, rather than on legal treatises and jurisprudence. Soon after the growth of Islamic boarding schools, Muslim reform or "modernist" movements were formed that established Muslim schools modeled on European missionary schools. Performing collective *ijtihād* and stressing the principle of *maṣlaḥah*, which they understood to be derived from *maqāṣid al-sharī'a*, Muhammadiyah, a leading "modernist" group, organized an extensive network of social welfare

institutions, including schools, universities, orphanages, hospitals, and a nation-wide bank. Significantly, Hefner notes that Indonesian Muslim reformers reluctance to promote discursive reinterpretations of Islamic traditions, and their inability to transmit these discourses to social and political elites, complicated their projects amid challenges posed by an array of political Islamic organizations in the post-Suharto period. Although the two largest reformist organizations, Nahdlatul Ulama and Muhammadiyah, both formed in the early twentieth century, had been able to steer sharia debates in the past away from calls for an Islamic state, they face shifting circumstances in contemporary Indonesia. They are faced with the emergence of many new normative organizations with roots in transnational Islamic movements, the decline of their dominant influence on public affairs, and contests within their organizations over public ethics. In addition, the National Council of Indonesian Ulama (*Majlis Ulama Indonesia*, MUI), designed to be a pliant Islamic linking institution under the Suharto regime, has emerged as a self-proclaimed independent organization of "civil society" forming connections with political Islamic radicals and issuing conservative fatwas. Nevertheless, drawing upon his extensive research on these topics, Hefner argues that growth of political Islamic organizations and public piety has not resulted in greater support for Islamic political parties due to the manner in which the popular Indonesian sharia imaginary remains largely imprinted with a *maṣlaḥah*-inflected *maqāṣid al-sharīʿa* ethos.

The second section of this volume concentrates on sharia in relation to the state and society. In Chap. 5, James Frankel describes over 1300 years of history of Muslims in China and the way Chinese Muslim approaches to sharia shifted from a law governing all aspects of life to a narrower focus on communal ritual law and individual religious practices. The relations between Chinese states and Muslim minorities fluctuated over this long history with some pushing for more assimilation and allowing varied spaces for sharia. Frankel notes that pressures to assimilate Muslim populations brought notions of sharia into contact with Confucian and Neo-Confucian ideas of ritual, social hierarchy, harmony, justice, and self-cultivation, and Islamic knowledge and practice were altered. Chinese states also mediated doctrinal disputes between Chinese Muslims of various religious orientations, such as the more Confucianized Han Kitāb scholars and the Qalandariyya Sufi order. Moreover, Frankel describes varieties of political Islam in which Sinicized Muslims, who simultaneously embody Chinese and Muslim identities, engaged in both "concord and conflict"

with Chinese states. At times they allied themselves with their non-Muslim cohorts to fight for change *within* the Chinese system. On the other hand, many Turkic-speaking Muslims in Xinjiang, such as the Uyghurs, have often declared more open opposition to Chinese domination and are still considered a threat today. Frankel also considers how Chinese Muslims have been confronted with several state projects, including secular modernity, since the early twentieth century. While the postreform period in the 1980s ushered in greater religious guarantees for prayer and pilgrimage, Muslim fasting practices remained disrupted, as the secular state does not consider them to be part of "normal" religion.

In Chap. 6, Timothy P. Daniels describes a wide range of sharia projects, including political parties, nongovernmental organizations, and the Malay Muslim-led government of Malaysia, which has facilitated the institutionalization of sharia family laws and limited criminal laws. While most of these projects were in favor of sharia being implemented as positive law, some reformist projects, such as that of the Muslim feminist organization, Sisters in Islam, and of the charismatic opposition leader, Anwar Ibrahim, propose a more "religious secular" direction they envision as being more in tune with the overarching objectives of sharia. Daniels considers two contentious and dramatic sociopolitical events that demonstrate the patterns of interplay between these sharia projects and secular liberal rights projects. While there appears to be some interdependence between pro-sharia projects and campaigns for reforming gender relations, there seems to be much less in relation to reforming interreligious and interracial hierarchies.

The third part further explores the topic of sharia and gender relations in three Muslim-majority societies: Malaysia, Nigeria, and Pakistan. In Chap. 7, Laura Elder focuses on Malaysian women, sitting on banks' sharia councils and securities commissions, who make interpretations pertaining to the sharia compliance of products in the Islamic finance market. They inform her that their decisions to consider "sale and buy-back linked trades" as sharia compliant are based on minority views within legal schools other than the Shāfiʿi school which has been the dominant school historically in Malaysia. This is an example of what Ibrahim (2015) calls *pragmatic eclecticism*. Similar to the IIFA scholars, these female sharia experts are concerned about the degree of "uncertainty," a quality to be avoided in economic exchanges according to the classical scholars. Tentatively, these women and the National Bank have decided that the level of "uncertainty" is acceptable based on the *fiqh* concepts of *ʿurf*

and *maṣlaḥah*, which includes the "need to compete with other banks." Laura Elder even goes further and demonstrates how sharia experts in Malaysia include neoliberal values into their *ijtihād* about the permissibility of new financial products. Nevertheless, Elder argues that discourses about women as "meticulous workers" and about their "primary work" as mothering have the effect of damping the power of women's expertise as sharia advisors and may foreclose possibilities of these women playing more transformative roles in society and financial markets.

Sarah Eltantawi, in Chap. 8, examines some gender dimensions of the 1999 sharia revolution in northern Nigeria in which Islamic laws were rapidly implemented in response to popular demands. After Amina Lawal, a lower-class peasant woman, was sentenced to death for committing illegal sexual activity, an assortment of Western political leaders, institutions, and international human rights organizations reacted severely criticizing the sharia court's decision in this case and sharia law in general. Nevertheless, Eltantawi contends that international pressure played a complex role and that there was no evidence it was the reason for the eventual acquittal of Amina Lawal. Her main concern is with representing the voices of local Muslim women that are opposed to some aspects of Islamic law, voices she argues are often excluded from scholarly studies in the interest of not reinforcing imperial use of the trope of "oppressed Muslim women" as justification for military adventures. While Eltantawi views these scholarly critiques of imperialistic discourses as valuable, she contends that researchers must find a way to also include the "indigenous" opposition to sharia posed by Muslim women. Drawing upon her ethnographic research in northern Nigeria, she demonstrates that many local women have serious concerns about the way sharia is being reintroduced in contrast to the perspectives of men leading the hegemonic "masculinist" political Islamic project. Her female interlocutors spoke of lesbian experiences and the widespread lack of women having orgasms given sexual practices oriented toward the satisfaction of men. They expressed ideas and feelings critical of the "male-oriented" and unfair implementation of sharia, and called for cultural change, access to Western education, and the protection of young women from the dangers of early pregnancy and childbirth.

In Chap. 9, Meryem F. Zaman explores gender and sharia in relation to the Al-Huda and Tablighi Jama'at piety movements in Pakistan. In contrast to the distinction many scholars of Islam make between political

Islamic and piety movements, the popular perception in contemporary Pakistani society is that these forms of Islamic movements are the same or highly similar. As a result of being lumped together with political movements that call for "sharia" as fixed laws to be implemented by the state, piety movements avoid using the word "sharia," although they draw heavily from the main sources of sharia as they strive to apply principles, *fiqh* categories, and objectives derived from Qur'an and hadith in their everyday lives. Both of these organizations discourage explicit discussions of politics in movement spaces. Al-Huda, founded by a professional woman and with strong outreach to middle- and upper-class women, has influence beyond its limited size. They encourage women to rely on their knowledge gained from studying sacred texts rather than on the rulings of *'ulamā'* that they consider to be influenced by the world of politics. Moreover, as women in this movement make personal changes in their lives, they often challenge traditional structures of authority. They are also often criticized for working alongside nonrevival women in high-status professional jobs; however, these women consider conventional ideas about gender segregation to be based on incorrect interpretations of textual sources. Tablighi Jama'at, founded by a man in the early twentieth century, expresses greater deference to *'ulamā'* but concentrates on sending laypeople on missions calling Muslims to correct their religious practice. They both support the authority of *'ulamā'* through emphasizing uncontroversial acts of piety and threaten their authority through insisting that women are "essential partners" in the active work of performing *da'wa*, which facilitates the participation of women in travel missions and religious schools. However, this piety movement insists on gender segregation, and few of its female members work outside of women-only settings. Nevertheless, Zaman notes that the religious interpretations and gender ideologies of both of these groups present women as equal participants and provide valued roles for them to play in the public sphere in contrast to the political Islamic movements that view the participation of women as an "undesirable necessity" to achieve the political aim of laying claim to the state.

The final section explores the topic of sharia and religious pluralism, another important theme that overlaps with some chapters in previous sections. In Chap. 10, Wajeeha Malik concentrates on the divergent interpretations of the Pakistani Sunni majority and minority Ahmadis who both consider themselves to be followers of the Ḥanafī school of jurisprudence. However, they disagree on the finality of prophethood with Prophet Muhammad, a belief that became a cornerstone of doctrine during the

classical era. The Pakistani Sunni majority interpret the Qur'anic phrase *khatam al-nabiyyin* (Q. 33:40) in reference to Prophet Muhammad to mean that he is the final prophet of God, but many Ahmadis interpret that it means that he is the final major prophet or bearer of God's law. They consider Mirza Ghulam Ahmad to be a subordinate prophet, and interpret the rejection of a Muslim's claim to be a believer as contrary to prophetic traditions. However, Malik notes that the dominant perspective of the Sunni majority has been inscribed into the law of the state—despite Pakistan's "founder's" vision of a multireligious secular nationalism—which restricts Ahmadis from speech and symbolic acts that express their self-identification as Muslims. Her interviews with Pakistani Americans of Ahmadi background indicate that they stress their Muslim identity to demonstrate the dominant exclusionary sharia project in Pakistan and to negotiate their position in the broader American Muslim community. Their narratives of "looking back" tell of ongoing persecution as a Muslim minority that dominant Sunnis deem to be outside the bounds of Islam, and of "looking forward" speak of efforts aimed at integrating into American society, a place they consider to be an "abode of Islam." Malik contends that Ahmadi experiences with exclusion reveal the nefarious effects of both religious and secular machinery.

Charles Allers, in Chap. 11, provides a detailed description of the Malaysian opposition leader's construction of a liberal democratic and pluralist vision for Malaysia drawing upon his interpretations of the overarching objectives of sharia. Allers sketches Anwar's background of early educational experiences within a diverse social environment and his subsequent leadership role in Islamic activism in the 1970s prior to his joining the United Malays National Organization in 1982. He quickly moved up the ranks becoming the Malaysian deputy prime minister in 1993. During his tenure as deputy prime minister in the mid-1990s, Allers argues that he further developed his inclusive and pluralistic perspective appealing to the concept of *maqāṣid al-sharīʿa* for the first time. Anwar was sacked from his position of deputy prime minister in 1998 and accused and arrested for fraud and sodomy. He was tried, convicted, and imprisoned for six years and after being released once again faced sodomy charges in the late 2000s, found guilty, and returned to prison in 2015. Throughout this time period, Anwar continued to formulate his universal and pluralistic ideology declaring the compatibility of Islam and democracy.

Finally, in Chap. 12, David J. Banks gives insights into his extensive ethnographic research in Kota Kinabalu, Sabah. He provides a detailed social and historical background informing us of the long-term issue with negotiation of equal citizenship for non-Malay groups, the majority in Sabah in contrast to the peninsular Malaysia context. Datuk Mustapha Harun, former governor and chief minister of Sabah until 1976, restricted Christian missionaries and organized mass conversions to Islam. He orchestrated a project to unify Sabah with a new Malay identity stressing Islam and use of Malay, the national language. After this historical discussion, Banks proceeds to his contemporary ethnographic research in several mosques in which his interlocutors speak of a unifying feeling produced and expressed in Islamic chanting practices that parallel many pre-Islamic indigenous practices. He presents detailed description of local Shāfi'i *'ibādāh* (worship) in mosques in Kota Kinabalu and suggests the emergence of new ideas and sentiments from these practices. Local worshippers tell Banks that ongoing conversions of Chinese, Indians, and non-Malay indigenous people, Islamic ritual practices, and visiting during religious celebrations foster good feelings and love. These body techniques and dispositions partially stem from the disciplinary practices of social and political elites in the form of sermons and scholarly texts. However, Banks argues that Islam as practiced in Sabah is comparable to the "minimal religion" discussed in Russian postmodernism literature. Kota Kinabalu Muslims emphasize practicing Islam to satisfy spiritual needs bringing them closer to God rather than as part of any political agendas. Distancing themselves from the pulpits where government controlled sermons are disseminated, they seek out personal religious experiences and knowledge and perform charitable activities as their struggle (*jihād*) within the alternatives provided by the sacred law. Moreover, Banks links these embodied practices and informants' ideas about *jihād* with their ideas and feelings of obligation and love toward non-*bumiputera* groups and emergent notions of national integration.

We hope that this collection of chapters about sharia articulating with various forms of cultural knowledge, practices, and sociopolitical processes will shed some new light on dimensions of religion in our contemporary world. Overall, this volume directs us to produce a new anthropology of Islam, transcending the false dichotomy of discursive tradition and interpretative frameworks, avoiding the pitfall of a culture-eliding abyss of habitudes, and finding productive ways to sustain cultural analysis—

illuminating the articulation of complex concepts and various forms of modernity, secularism, and religiosity.

Notes

1. For instance, Paul Radin (1883–1959), a student of Franz Boas, wrote: "I can think of no better method of introducing the subject than by quoting appropriate passages from the Winnebago texts secured and then discussing them in light of the knowledge they throw upon the system of ethics enunciated and, more specifically, upon the type of self-control implied" (1957 [1927]). Claude Lévi-Strauss (1960), discussing Paul Radin's analysis of Winnebago texts, states: "As explained by Radin in his commentary, there is a native theory underlying the myth: every individual is entitled to a specific quota of years of life and experience." He proceeds to conduct a structuralist analysis of the knowledge embodied in four Winnebago myths Paul Radin collected.
2. Turner (1964) wrote: "Each 'river' is a multivocal symbol with a fan of referents ranging from life values, ethical ideas, and social norms, to grossly physiological processes and phenomena. They seem to be regarded as powers which, in varying combination, underlie or even constitute what Ndembu conceive to be reality."
3. Johnston (2004) argues that mainstream Muslim reformers of the twentieth century embraced a paradigm shift from the classical Ashʿarī to a Muʿtazilī position in which reason is empowered to distinguish right from wrong and to make ethico-legal rulings based on the *maqāṣid al-sharīʿa*. This trend has continued into the twenty-first century.

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PART I

Sharia and Discursive Tradition

CHAPTER 2

Fatwa, Discursivity, and the Production of Sharia

Omer Awass

Introduction

This investigation examines the production of Sharia law in the postcolonial period. More particularly, it analyzes contemporary fatwas (authoritative religious legal edicts) as legal indicators for changes in Islamic law. Historically speaking, substantive aspects of Islamic law developed out of the material of fatwas. In the early stages of Islamic history, there were no codified laws to guide people in their religious and social concerns, but the manner in which Muslims sought guidance with regard to their religious practice was that they posed their concerns to early jurists in the form of religio-legal questions, which were addressed in the form of fatwas. Out of the critical mass of these fatwas, Islamic legal manuals began to be compiled and a definitive corpus of Islamic law came into being.

Out of this legal activity, an Islamic legal tradition emerged which gave a definite shape to Sharia. I discuss the emergence of this distinct Islamic legal tradition in the third/ninth through fifth/eleventh centuries AH/CE and how determinative this legal tradition became on Sharia until the colonial period. I describe the nature of the relation of the past to the Islamic legal tradition by looking at the ideas and institutions that came to embody that tradition and how these ideas and practices were direct prod-

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ucts of the fatwas of past jurists whose legal pronouncements informed the content of Islamic legal doctrines developed in subsequent centuries.

This historical foundation provides a basis for a diachronic assessment of the transformations that take place in the traditions of Sharia as a result of the encounter with colonialism. In the latter part of my investigation, I examine how the practice and rationalization of fatwa has changed due to the impact of colonialism on the Muslim world. In particular, the established practices and doctrines of Islamic law were critiqued through the lens of modern Western ideas as well as historically Muslim ideas that were seen to be as in congruence with "modern" ways of thinking. This spawned modern Muslim movements that sought to reform Islamic law and redefine its relationship to the state and society.

More particularly, I will examine the contemporary fatwas issued by the International Islamic Fiqh Academy (IIFA), an organization consisting of scholars from across the Muslim world. These fatwas address social issues that have arisen because of Sharia's encounter with "modernity." These fatwas include issues such as stem cells, modern banking, and investing in the stock market. From these fatwas we can map the reproduction of Sharia in the postcolonial era and, at the same time, measure how Muslims are responding to contemporary challenges in light of Islamic legal traditions.

Sharia and the Islamic Legal Tradition

Experiences and events of the past were integral to the formation of Sharia, where those experiences and events were transmitted to subsequent generations. These later generations viewed those past experiences as having an aura of authority that normatively shaped their contemporary practices. In this way, Islamic law can be viewed as a legal tradition. But what is tradition and what makes Islamic law a legal tradition? More importantly, what sort of legal tradition is the Islamic legal tradition? Tradition is not merely a transmission of ideas from the past, but a belief in their present value (Radin 1934, 62). In this sense tradition is distinct from habituated custom in the fact that it consists in some ways of conscious recognizing and choosing.

Krygier notes three fundamental characteristics of any tradition. First, its *pastness*: the belief of the participants in that tradition that it originated at some point in the past. Second, its *authoritative presence*: although it originated in the past, it has significance for the lives and activities of those who participate in it in the present. Third, *transmission*: traditions are not

merely discontinuous projections of the past on the present. There is continuity in their conveyance from one generation to the next whether this transmission was deliberate or otherwise (Krygier 1986, 240). So a necessary consequence of this third characteristic is that traditions are fundamentally social (Krygier 1986, 240) because they are born and sustained through the constant interactions of groups.

This is not the place to explore the history of the Sharia, but an investigation of the history of Islamic legal discourse would show that it can be construed as a tradition as delineated by Krygier. First, the substance of these discourses and practices indeed originated in the past, starting with the fact that their normative bases are found in textual sources from the past, such as Qur'an and *ḥadīth*, as well as the formulation and formalization of the law coming from authoritatively recognized jurists of the past. Second, those legal discourses that were formulated in the past were viewed as authoritative in subsequent generations as evidenced by the formation of Islamic legal schools, legal theory, and public practice around the legal doctrines, practices, and principles of second- and third-century jurists. Last, the opinions of past legal authorities were continually passed down and transmitted to later generations either orally, as was primarily the case with first-century legal authorities, or through writing as was predominately the case for jurists starting in the second century.

But more importantly, if the Sharia represents a legal tradition, what sort of tradition is it? In a seminal article written nearly three decades ago, Talal Asad stated that Islam, more broadly, should be viewed as a discursive tradition (Asad 1986, 14). Asad gives a peculiar definition of tradition as consisting of "discourses that seek to instruct practitioners regarding the correct form and purpose of a given practice that, precisely because it is established, it has a history" (Asad 1986, 14). So, what is unique about Asad's understanding of tradition is that it centralizes discourse as a mediating principle between past and present. For Asad, traditions comprise discourses that link the past, present, and future through the medium of continuously transmitted pedagogic instructions on the purpose and correct form of particular practices (Asad 1986, 14–15).[1]

For Asad, Islam is a discursive tradition precisely because it is related to certain foundational texts such as the Qur'an and *ḥadīth* (prophetic traditions) (Asad 1986, 14). It is this concept of discursive tradition that I seek to employ in describing the Islamic legal tradition. If the entire enterprise of Islam can be described as discursive tradition, then its legal tradition, which is a subset of it, may be described as a discursive legal tradition.

This is because the Qur'an and *ḥadīth* are as much the starting points of the religious tradition of Islam as they are also the foundations of its legal tradition.

Aside from establishing certain legal injunctions, the Qur'an was the substantial origin of Islamic law, providing the ethical/legal norms from which the principles of this law were extracted (e.g. the commanding of virtue and the prohibition of vice). It also discursively established ethical consciousness (i.e. *taqwa*) as the psychological motive for observing its ethical–legal norms. These twin pillars of moral consciousness and ethical–legal norms were crucial to the formation of this legal system as they were the mental and social impetus for creating the structure of obligations and sanctions that were required for the law to operate as well as being foundational elements in creating the Muslim legal subject.

Moreover, the dialogical manner of the Qur'anic discourse initiated the establishment of established legal mechanisms (e.g. *iftā'*) by which many of those ethical–legal norms would be transmitted. *Iftā'* (i.e. the fatwa making process) was both encouraged and employed in the Qur'anic discourse, thereby inaugurating a practice that would be the quintessential method of promulgating Muslim law and extending the reach of those Qur'anic norms. In addition, the Qur'an's dialogical approach, especially with regard to seeking fatwas (see, e.g. Qur'an: 2:189; 2:217; 2:219; 2:220; 2:222; 4:127; 4:176; 5:4; 8:1), facilitated the practice of its ethical–legal norms, as the practitioners of the Qur'an's injunctions were in some ways active participants in the formation of those norms. At the same time, the gradual manner in which those norms were introduced (over a period of 23 years) enabled the transformation of both individual and community, thus fostering the evolution of Muslim legal subjects and society.

The prophetic practice (i.e. *sunna*) played a supportive role in this process of forming this discursive legal tradition. The Prophet Muhammad was the legal authority who enforced Qur'anic legal norms over the nascent Muslim community, and his practice became the framework for how these norms would be understood and implemented. Moreover, the legal rationale and interpretive tools which he employed to extend the scope of these Qur'anic norms paved the way for later generations to understand how to derive the law from both the Qur'anic norms and his example. Later, the prophetic practice would be discursively embodied in what would be known as the collections of *ḥadīth*. The corpus of *ḥadīth* would be a sec-

ondary source from which legal norms and injunctions would be derived in the Islamic legal tradition as established by Islamic legal theory (i.e. *uṣūl al-fiqh*).

So the basis of the Islamic legal discursive tradition was the textual authority that was exerted by Qur'an and *ḥadīth* as the core discourses that defined this tradition. At the same time, it is because of this textual authority of the Qur'an and *ḥadīth* that the Islamic legal tradition can be described as a discursive tradition, because they were the reference points for the legitimation of any statements or practices within it. So this Islamic discursive tradition in general is, as Saba Mahmood has pointed out: "a mode of discursive engagement of sacred text" (Mahmood 2005, 115) and its legal tradition is the quintessential example of this mode of discursive engagement.

But just as these foundational texts stand at the core of the discursive tradition of Islam in general and Islamic discursive legal tradition in particular, they are not the only discourses that comprise this tradition. Charles Hirschkind asserts that Asad's notion of Islamic discursive tradition ought to be understood as a "historically evolving set of discourses, embodied in the practices and institutions of Islamic societies" (Anjum 2007, 662). Historically speaking, distinct legal discourses that were based on these foundational sacred texts did evolve giving rise to a discursive legal tradition. To use Anjum's words in describing the Islamic discursive tradition, this legal subtradition likewise "would be characterized by its own rationality and styles of reasoning" in that its theoretical considerations and premises emanate "from the content and form of the foundational discourses (the content and context of scripture, the historical experience of Islam in its formative years, etc)" (Anjum 2007, 662).

The aim of the legal discourses would be hermeneutical in character, largely disposed to explicating the legal implication of the foundational sacred texts of Qur'an and *ḥadīth*. The textual authority of the Qur'an and *ḥadīth*, in terms of providing the substantial and normative basis of the law, would eventually necessitate the growth of hermeneutical discourses that would interpret those texts. This would eventually give rise to specialists whose epistemic function was to hermeneutically mediate between the larger public and these foundational sacred texts, thereby giving rise to authoritative discourses that would supplement the content and implications of the foundational and authoritative discourses of scripture.[2]

These hermeneutical legal discourses developed the rational and interpretive tools (e.g. *qiyās*/analogy, *istiḥisān*/utility, and other linguistically

based hermeneutical devices) that would both clarify the intent of scriptural norms and extend their reach to new legal domains. From these legal discourses, a body of authoritative legal doctrines and legal theory (i.e. *uṣūl al-fiqh*) arose which would become the bedrock of the Islamic legal tradition. Moreover, out of the legal opinions and methods of this class of authoritative legal specialists, the institution of Islamic legal schools (i.e. *madhāhib*) came into being. These doctrines, theories, and institutions would give shape to a peculiar legal tradition that was in some ways unique to the Islamic legal tradition[3] that most likely evolved as a result of the peculiar historical experiences of Muslim peoples. But more importantly, these discursive formations and their resulting practices would become the determinative matrix that would shape all future Islamic legal discourse in general and the fatwa tradition in particular.

Saba Mahmood asserts Talal Asad's notion of Islam being a discursive tradition because its "pedagogical practices articulate a conceptual relationship with the past, through an engagement with a set of foundational texts (the Qur'an and the ḥadīth), commentaries thereon, and the conduct of exemplary figures" (Mahmood 2005, 115). Moreover, she interprets Asad's concept of Islamic discursive tradition as representing a particular modality of Foucault's notion of discursive formation where "reflection upon the past is a constitutive condition for the understanding and reformulation of the present and the future. Islamic discursive practices … link practitioners across the temporal modalities of past, present and future through pedagogy of practical, scholarly, and embodied forms of knowledge and virtues deemed central to the tradition" (Mahmood 2005, 115).

This conception of tradition is a most apt description of the Islamic legal tradition. Islamic legal tradition is a discursive formation in that it was spawned from a series of past discourses and discursive practices that were always related to existing realities. The Qur'an and *ḥadīth* legitimated legal principles and practices (e.g. Qur'anic dialogical fatwa engagement, prophetic use of *qiyās*, as well as substantial legal norms from which legal doctrines were formulated), which were employed by later jurists to legitimate their own jurisprudential views and practices.

These foundational discourses gave impetus to those legal principles and practices that were elaborated and expanded upon by jurists who constructed a system of rules (i.e. legal rationales and hermeneutical tools such as the science of *uṣūl al-fiqh* or the formulations of legal doctrines based on the rules of the legal schools or *madhāhib*) that would regulate

the legal understanding and implications of those texts as to how they should inform the religious practices of the Muslim community.

These secondary discourses and discursive practices of the earlier generation of jurists and theorists mediated between these foundational sacred texts and the community and hence established the hermeneutical authority of those early jurists whose ideas and views shaped the future course and practice of Islamic law. This hermeneutical authority was later institutionalized in the form of Islamic legal schools and doctrines (*madhāhib*) and Islamic legal theory (*uṣūl al-fiqh*), whereby future generation would formulate the law and establish religious practice in reference to these past legal authorities and their institutionalized legal discourses. This authoritativeness of past legal discourses and the personalities associated with them became the constitutive condition for the understanding of Islamic law and how it should be formulated in the present and future.

Colonialism and the Change in the Status of Sharia in Muslim Societies

This Islamic legal discursive tradition, from the beginning of its formation, remained the dominant paradigm for the production of Sharia law for nearly a millennium and its development was something that was gradual and organic. This will begin to change toward the end of the eighteenth century when the rise of European power in the globe that brought about with it new set of attitudes and ways of thinking about the world. But most importantly, the rise of European power in the world brought about a new world order that would change the entire global social, economic, and political dynamic. Under these circumstances, the Islamic legal tradition was increasingly challenged by European ideas and institutions, which were gaining dominance in the world.

To illustrate how European colonialism challenged the primacy of Islamic law and its institutions in Muslim society during the colonial period, I will briefly discuss two cases that will illustrate my point: British India and French Algeria. In the case of British India, the British did not directly impose British law on Indians, but instead preferred a multitiered legal system whereby the British legal structure would be superimposed on native Indian laws, whether those laws were Hindu or Muslim, where British judges would adjudicate civil matters in accordance to Muslim and Hindu law (Hallaq 2009, 372). This necessitated the eventual translation

of Islamic legal compendia into English so as to give British judges direct access to Islamic legal statutes no longer relying on Muslim *qadis* (judges), whom they did not trust, to adjudicate legal issues that arose among the Muslim population. This led to the translation of the Ḥanafī Islamic legal compendium *Al-Hidaya* into English (Hallaq 2009, 374).

As Hallaq asserts, the translation of *Al-Hidaya* amounted to its codification, which made this legal compendium cease to function in the way it previously had, because it restricted juridical discretion of the *qadi* and replaced "the native's system of interpretive mechanisms by those of English law" (Hallaq 2009, 375–376). Furthermore, the translation/codification of *Al-Hidaya* severed its organic relatedness to the Arabic juristic and hermeneutical tradition by excluding considerations of customary norms that were essential to the functioning of Islamic law especially at the level of application (Hallaq 2009, 376). The superimposition of British legal structure on Islamic law in India perpetuated symbolic violence on the practice of Islamic law in India.

In the case of French Algeria, the French increasingly reduced the role of the Sharia (Islamic law) in Algerian Muslim society by reducing the types of cases that could be settled through Sharia law and then reducing the number of Sharia courts. The *qadis* (judges) lost the right to deal with cases concerning landed property in 1886, and criminal cases could only be dealt with by French jury courts where the French settlers were the jurors (Vikor 2005, 245). There were originally 300 Sharia courts in Algeria, but with the introduction of new policies that would further subdue Algerians to French domination, the number of these courts decreased from 180 to 60 in the period between 1870 and 1890. In the areas where Berber non-Arab tribes (Kabyle) resided, these courts were abolished altogether in 1874 under the guise that the Berbers were not sufficiently Muslim and ought to be governed by their own customary laws (Vikor 2005, 245).

As European colonialism went unabated well into the twentieth century, this led to the growth of various sociopolitical movements that sought to bring the end of colonialism in the Muslim world as well remedy its weaknesses that was perceived to be a factor in bringing about colonization of Muslim lands. Among the newly formed secular and Western-educated elite, the path to freedom and progress was through intensifying the modernization efforts that began in some Muslim regions in the previous century. Modernization for this group in some ways meant Westernization because aping Western values and customs was the easiest and fastest path to modernization. Those values included nationalism because every

Western society was based on an "intense sense of the nation" (Hodgson 1974, v.3, 246). For Muslim secular colonial elites, to be modern was to imagine their communities as nations. This gave rise of ethnic nationalism. By the late nineteenth century, for example, for the first time in the multiethnic and multireligious Ottoman Empire, this Arab Western-educated elite began to speak of an Arab fatherland, while their Turkic counterparts began to emphasize the Turkish nature of the ruling elite within the empire (Voll 1982, 94).

In Egypt, for example, the nineteenth-century Egyptian Westernizer Tahtawi spoke of past Egyptian glories, and within the larger Muslim community, "there were special national communities (i.e. Egyptian) that were deserving of loyalty" (Voll 1982, 96) paving the way for twentieth-century Egyptian nationalism. The same analysis applies to movements in other Muslim nations such as the Young Tunisians in Tunis or the Pan-Turkish Jadidi movement in Central Asia (see Voll 1982, 100 and 124). Eventually, nationalism became the political vehicle by which to eliminate Western domination in Muslim lands in the twentieth century and the basis for reorientation of Muslim societies into nation-states,[4] which were an extension of the artificial partitions already established by colonialism (Schulze 2000, 28). Moreover, Muslim secular elites were often committed to a liberal constitutionalism in the first half of the twentieth century (Lapidus 2002, 519). But in the second half of the twentieth century after achieving independence from their colonial master, their commitments took on a more socialist hue (Hodgson 1974, v.3, 369).

Yet the rise of Muslim modernism (rationalism) among some Muslim groups, that is the exposure of Muslims to Western liberal ideas through contact with the West or their institutions, did not always engender secular outlooks among other groups of educated Muslim elites in the nineteenth and twentieth century. Another group that came into being are Islamic reformers who advocated new Islamic solutions to the current crisis faced by Muslims, but were different in their approach to Islam from the tradition-oriented conservative '*ulamā*' although many of these reformers were from the '*ulamā*'. Islamic reformers often approached the authoritative textual sources of Islam (The Qur'an and the Sunna) from the point of view of modern rationalism and the natural sciences that developed in the West.[5]

Their agenda had two interrelated goals: to provide a progressive Islamic program that would remedy Muslim material decadence and spiritual malaise by showing that Islam was compatible with modern values;

second, they wanted to combat the Western perception that Islam was an irrelevant force in the modern world.[6] They sought to revive Islam by reassessing the authority of tradition and hence rejected traditional notions such as *taqlīd* (following the authority of medieval Islamic schools of law and theology) and advocated a new *ijtihād* (independent rethinking) based on the textual authoritative sources of Islam so as to keep Islam relevant to its modern context.[7] Two nineteenth-century representative figures of this movement were Sayyid Ahmed Khan in India and Muhammd Abduh in Egypt whose ideas gave birth to Islamic reform movements of the twentieth century.

With regard to Islamic law, the twentieth-century disciples of these reformers advocated legal positions that broke with the established Islamic legal discourse that had been developed over the previous millennium. For example, Rashid Rida (d. 1935), Muhammad Abduh's Syrian disciple, advocated setting aside of legal doctrines that were based on *madhhabs* so as to reformulate Islamic law based in the legal sources (i.e. Qur'an and Sunna). So, his was a call for a new *ijtihād* (legal reasoning) to be applied to legal issues that there had already been a consensus about among the legal schools; this proposal was essentially calling for the legal doctrines of *madhhabs* to be abandoned (Hallaq 1997, 215).

In brief, the colonial experience spawned new ideological movements in the Muslim world, which were seeking the best path forward to cope with a European imposed world order and an increasingly attractive Western worldview. The ideological responses to that challenge were varied, but they all underlined how Islamic tradition and society had to change to meet the demands of the new world that European colonial powers had been forging. Views of these reformers varied from those who sought to exclude religion (i.e. Islam) from public life all together and those who felt that the religion of Islam should continue to play a role in the public square, although they advocated an Islam whose concepts and tradition were sufficiently revamped to deal with the European notion of modern progress.

At this juncture, I will reiterate and elaborate on the arenas where Islamic law (i.e. Sharia) had been challenged in the colonial and postcolonial period. This will help the reader assess the extent that political, economic, social changes that have occurred in the nineteenth and twentieth century have impacted Islamic legal tradition over the past two centuries so as to better appreciate the sociohistorical impetus that is possibly leading to a transformation in that legal tradition. I identify two primary are-

nas where Sharia had been reconfigured in the colonial and postcolonial period: institutional and discursive. Both of these arenas can be broken down to two different periods: colonial period (c. 1800–1950) and post-/neocolonial or nation-state period (c. 1920 till the present). So, let me begin by assessing the institutional changes that Islamic law has undergone in the colonial and postcolonial period and then I will turn to the discursive ones.

Institutional Changes in Sharia

Colonial Period: In the nineteenth century, under colonial rule or foreign pressure, Sharia law in many Muslim regions was restricted to adjudicate matters of family law and pious endowments and was stripped of jurisdiction over criminal and commercial law (Asad 2003, 211). An example of this is the Ottoman adoption of European penal and commercial codes (Hallaq 2009, 407).[8] In addition, European pressure to set up separate courts in Muslim regions that would handle cases involving Europeans (e.g. Egyptian Mixed Courts) led to the growth of secular courts and restrictions on religious courts (see Hallaq 2009, 422–425). This bifurcation of roles was eventually abolished by postcolonial states where religious courts were just subsumed under the new secular courts, which were now called in Egypt as National Courts, and this further limited the jurisdiction of the Sharia to issues such as family law (see Asad 2003, 211 and 215).

Moreover, these legal reforms in the jurisdiction of Sharia ultimately reduced the role of '*ulamā*', who were the traditional representatives of the Sharia in society. These modernizing reforms were really intended to strengthen the hand of the secular state at the expense of the civil society, and this was done through increasing of the centralization of state and the widening of its intrusion in the realm of public affairs. For example, during the nineteenth-century Ottoman Empire, the period of *Tanzimat* reforms which led to the increasing bureaucratization of the state, Sultan Mahmud II (in 1826) and his advisors created the ministry of Imperial Pious Endowments "which brought the administration of the major *awqāf* (or '*waqfs*' charitable endowments) under the central administration; where *waqfs* were previously under the independent control of families and religious scholars and organizations" (Hallaq 2003–2004, 255–256). The pious endowments, which traditionally were the material base of the '*ulamā*', passed out of their hands into state control, further weakening the independence of this group (Voll 1982, 91).

Nation-State Period: with formation of Muslim nation-states in the early twentieth century, the removal of legislative authority from the hands of Muslim jurists (*fuqahā'*) had been almost complete. Whereas the jurists controlled the legislative and judicial functions in the precolonial state, these functions were transferred to the "modern" nation-state in the form of a secular legislature and judiciary. Precolonial sovereigns in the Muslim world were subject to the law and were not its makers, while the modern nation-state "arrogated to itself the status of legislature and at the same time a position above the law" (Hallaq 2003–2004, 254–255). Centralization in the modern nation-state was the main process that was employed to take control of the law (Hallaq 2003–2004, 255). Modern Muslim nation-states wrested Sharia law from the control of Muslim jurists. For example, in Syria and Iraq, polygamy was prohibited unless it was permitted by the religious judge (qāḍī), "who must be satisfied that the husband is financially capable of maintaining more than one wife" (Layish 2004, 95).

Even in areas where Sharia law was allowed to have jurisdiction, there was a move away from legal doctrines that were determined by the classical Islamic legal schools (*madhhab*) and a formulation of law based on pan-*madhhab* considerations by use of the legal mechanism of *talfīq* (i.e. amalgamating rulings from different schools). In the precolonial period, Sharia was only operationalized through the particular *madhhab* adopted by the state, but with the formation of the nation-state, that was no longer a consideration. Examples of how modern Muslim nation-states used this dubious legal mechanism to legislate were the Sudanese and Egyptian laws that legalized right of the deceased to dispose of his/her inheritance in accordance with their own judgment and preference, a legal position which actually was in agreement with Twelver Shi'ite law but not with the major Sunni schools. This was despite the fact that both Sudan and Egypt were Sunni majority countries and Sunni law only allows for the disposal of the inheritance in accordance to prefixed shares. This type of amalgamation of law (*talfīq*) was unheard of in previous eras.[9]

Discursive Changes in Sharia

Colonial Period: During the nineteenth century, the Ottoman *Tanzimat* reforms brought about changes in Sharia law and its respective institutions. Prior to these modernization efforts, the Sharia was embodied in the form of fluid interpretive legal texts that were the reference point for

how Islamic legal matters were decided. This form of *fiqh* practice changed in the Ottoman Empire in the latter part of the nineteenth century, when Sharia took the form of a rigidly codified law, as was the case in the legal work known as *Al-Madjella*, so as to emulate European models of law.[10]

The Nation-State: Discursive changes in the Sharia during this period were of two types: state-based reforms and nonstate-based reforms. As for state-based reforms, the injunctions of the Sharia were codified into statutory provisions. Codifying the religious law brought about its nationalization, because Sharia-based injunctions that were incorporated within legal statutes were seen strictly as national–territorial statutes; hence, they were interpreted within the framework of the nation-state as opposed to the framework of the Islamic legal tradition where transregional legal commentary informed the public about how to understand Sharia. Codifying Sharia in statutory form made it no longer bound by the rules of Islamic legal theory and methodology that were developed by the generations of Muslim jurists; indeed, it now was determined by national legislatures who were ignorant of the origins and implications of these laws.[11]

As for nonstate reforms, there were growing calls of reform within circles of Muslim intelligentsia who wanted to reformulate the classical Islamic legal doctrines that were based on Islamic legal schools (*madhāhib*) for new legal doctrines that would be based on scriptural sources (i.e. Qur'an and *Sunna*) reformulated for contemporary conditions. This is best illustrated in efforts by reformists, who sought to reformulate doctrines that did not adhere to the traditional legal schools. An example of this is Sayyid Sabiq's legal work *Fiqh al-Sunnah*. Also there were calls for a shift away from legal juridical concepts that were traditionally agreed upon, concepts ranging from widely held principles such as *qiyās* (analogical reasoning) to juridical concepts that were not overtly applied in legal reasoning such as *maṣlaḥah* (utility) and '*urf* (customary practice). This is evident in Rashid Rida's rejection of *qiyās* and its displacement with *maṣlaḥah* (Hallaq 2009, 506) as well as Khallaf's elevating the prominence of '*urf* in legislation (Hallaq 2009, 509).

European impositions on the Muslim society, such as the European calls for modernization, impacted the manner in which Islamic law was reconfigured both institutionally and discursively. This challenge solicited responses from various Muslim circles, yet the intricacies and transformations of modern life happened so quickly, so drastically, even violently, that Muslim circles had difficulty adapting and keeping pace as they struggled to address the totality and extent of that challenge with the sociolegal

tools that Muslim tradition had developed within more agrarian-based societies. This situation led to the call for radical change within segments of the Muslim intelligentsia. The key point here is to see whether these calls for change, both then and now, promise to have a lasting impact on the Islamic legal tradition by filtering into its core discourses.

Fatwa in the Postcolonial Age

In this final section of the chapter, I will analyze fatwas issued in the postcolonial period as a barometer for assessing the impact of "modernity" on Islamic law in light of the sweeping changes that have taken place in the Muslim world over the past 200 years. I have noted the influence of European ideas and colonialism on the theoretical legal discourse of the reformists in the twentieth-century Muslim world, but did this theoretical discourse have an effect on the subsequent practical discourse of Islamic law as represented in the fatwas? Moreover, how have the changes that were initiated in the colonial period affect Islamic legal institutions in the postcolonial period? To make such an assessment, I would examine the fatwas of one postcolonial Muslim legal institution: The International Islamic Fiqh Academy (IIFA) of the Organization for Islamic Cooperation (OIC). But before I engage such an examination, the following is a brief introduction to these institutions.

The Organization of Islamic Cooperation (OIC) and the IIFA

The Organization of the Islamic Conference, now known as the Organization for Islamic Cooperation, is an intergovernmental organization that arose out of need to increase cooperation between Muslim states in an era of the postcolonial nation-state system. Fostering "Islamic solidarity" between Muslim nation-states was the key objective in the organization's formation (Ihsanoglu 2010, 2) in the postcolonial era. The initial impetus for the call of cooperation came about in light of an Israeli arson attack on the Muslim holy shrine—the Al-Aqsa Mosque—in Jerusalem in August of 1969. Muslim governments were called upon to hold a summit to condemn the Israeli occupation of Palestine (al-Ahsan 1992, 108). An initial organizing meeting, the First Islamic Summit, took place in September 1969 in Rabat, Morocco (al-Ahsan 1988, 18; Ihsanoglu 2010, 26), in the aftermath of newly formed Muslim nation-states freeing themselves of the European colonial yoke by the 1960s. Thirty-six Muslim

nation-states were invited to the summit, but only 25 attended (Ihsanoglu 2010, 26).

The OIC membership of Muslim nation-states has grown since its inception in 1969. It now has 57 member states (see Ihsanoglu 2010, 219–220), even though some of those states are not majority Muslim states but have significant populations of Muslims (e.g. Gabon). The organization has also established many subsidiary organizations that promote its goal of Islamic solidarity. One such organization is the creation of the IIFA that was created in the OIC Third Islamic Summit Conference in Mecca in 1981 (al-Ahsan 1988, 36). The OIC's stated purpose for this body was to gather "religious scholars and intellectuals in various cultural, scientific, social and economic disciplines from various parts of the Muslim world, to study problems of contemporary life and to engage in original effective *ijtihād* (legal reasoning) with the view to providing solutions, derived from Islamic tradition and taking into account developments in Islamic thought, for these problems."[12]

The membership of the IIFA consists of "expert jurists and scholars of Islamic jurisprudence and various other sciences" (Ihsanoglu 2010, 42). The purpose of the Academy is to foster Islamic unity by promoting adherence to an Islamic jurisprudence that engages contemporary issues so as provide Islamic solutions that are both effective and authentic (Ihsanoglu 2010, 42, 91–92).[13] The idea is to bring about renewal of Islamic jurisprudence that reconciles the differences between Islamic legal schools by emphasizing their common ground through a process of collective *ijtihād* on modern problems (Ihsanoglu 2010, 92–93). In other words, there is recognition by the academy that problems in postcolonial world are too complex to be dealt with strictly by traditional approaches and methodologies of Islamic law and require a more collective effort that brings together authoritative legal scholars ("muftis") from the various legal schools to collaborate towards a trans-*madhhab* approach to resolving these problems. This approach is partly substantiated by the fact that the muftis that are chosen for the fatwa committees come from all across the Muslim world and have various *madhhab* affiliations.[14]

To corroborate these assertions, the current administrative director of fatwas at the IIFA, Abdul Qaher Muhammad Qamar, states in a paper that he delivered at a conference in Kuwait in 2007[15] that among the objectives of the IIFA is to work toward the renewal of Islamic law by means of its internal development and advancement utilizing the Islamic legal theory (*uṣūl al-fiqh*), the aims and principles of Islamic law (*maqāṣid and qawa'id*

al-Sharīʿa) (Qamar 2007, 12). So it may be observed from this statement that the IIFA vision for renewing of Islamic law is in some respects a conservative one given that the means of renewal take into consideration traditional Islamic legal principles, methods, and goals as the means by which this renewal should take place and is not the sweeping overhaul of Islamic legal practices and institutions that many Muslim reformist had called for.[16]

Nevertheless, there are points of divergence between the IIFA's vision of renewal and the ways Islamic law was practiced in the precolonial period; one example is the fact that the IIFA does not see the necessity of restricting rulings within the confines of the traditional doctrines of Islamic legal schools. In this respect, Qamar states that one of the goals of the IIFA is to bring together jurists from the various Islamic legal schools so they can converge on those points where they share common ground yet remain respectful of their divergences (Qamar 2007, 12). As alluded to earlier, Sharia rulings in the past were produced in light of existing doctrines (precedents) and legal methodologies within a particular legal school. In attempting to bring about a convergence of the various approaches to the production of Islamic law, the IIFA is engaging in novel legal practices that hitherto had not been practiced by previous generations of legal scholarship. Let me now look at how this approach plays out in the practice of fatwa production of the IIFA.

An Examination of the IIFA's Fatwas

For the purpose of illustrating these theoretical points, I will look at fatwa literature issued by the IIFA in the field of commercial and financial transactions, as this is one of the fields that have undergone the most dramatic change with the imposition of the global capitalist system. The point here is that modern financial practices, which developed in the West and are the standard mode of operation in global financial institutions, pose a challenge to Muslim economic ethics and law, a challenge that Muslims are trying to negotiate through the use of traditional legal practices such as the fatwa. Therefore, we always need to keep in mind how the Islamic legal discourse and institutions are being slowly reconstituted to adapt to the challenges of colonialism and its aftermath.

With this in mind, I have chosen five particular fatwas (or *qarārāt*—resolutions—as the IIFA calls them)[17] as the sample for my case study of

contemporary fatwas. These fatwas are about the following five topics: abstract rights, Islamic stocks (*sukūk*),[18] endowing stocks, health insurance, and international trade. But before I talk about the actual fatwas, let me make a few brief remarks on the deliberation procedures of such fatwas. While the muftis on the fatwa committees of the IIFA make their deliberations on the particular issues at the conferences that are convened for these deliberations, they are presented with detailed research studies on the subject of deliberation from various specialists on those issues prior to the deliberations. Hence, the discussions of the Muslim experts are informed by detailed studies from those who are experts in finance and economics.[19] It is not until they have read/heard the expert analysis that they come to some legal resolution of the matter being considered (Qamar 2007, 19). They recognize that issues arising in the postcolonial age are too complicated to be simply addressed by a mufti without the mediation of an expert in that field who can help the mufti better understand the nature of the process or phenomenon that they seek to engage.

Instead of analyzing each fatwa individually, I will examine these fatwas in light of some common themes that emerge from them. This approach to the analysis is justified by the fact that all of the fatwas are issued from the same fatwa-making body (i.e. the fatwa committees of IIFA) and display a similarity of certain substantive and procedural legal characteristics that would facilitate this approach. With that said, two basic common themes emerge from my analysis, both of which revolve around the broad unifying theme of continuity and change in Islamic law. Those two themes are: first, the conscious connection of the new IIFA rulings to the historically established teachings of Islamic law; second, the types of legal rationale that are employed in the justifications of their positions. In the following paragraphs I will handle each of these points in more detail.

Relationship of IIFA Fatwas to Established Islamic Law: The resolutions (fatwas) of the IIFA are not made in a vacuum, but assume a body of legal knowledge from which their resolutions are an extension. In other words, the legal decisions that are reached and presented give the impression that these decisions are reached in the light of already established and agreed upon legal principles and doctrine and that these new legal decisions are merely trying to elaborate and apply these traditional principles to the contemporary context. For instance, in Resolution 178, the IIFA tries to delineate the specific characteristics of a legitimate Islamic stock (*sakk*); the decision reached by the IIFA says: "the Islamic stock (*sakk*) should

be issued in accordance to a Sharī'a (legal and legitimate) contract, and it takes on all of its legal rulings."[20]

The resolution goes on to spell out some of those conditions of a legitimate Islamic financial contract, but what is of greater concern here is that this statement indicates that the IIFA already assumes that there are established Sharia rules for contracts that are to be taken into consideration when formulating guidelines for Islamic stocks. Hence, there is an implicit analogy between traditionally established financial contracts and between the newly established financial contracts of *sukūk*. So it seems that the IIFA is not necessarily arguing for the legitimacy or illegitimacy of a certain issue by appealing to the discursive sources of Islamic law like the Qur'an and Sunna, nor is it trying to appeal to any innovative Islamic legal principles by which they are arriving at their decision. Rather, there is an assumption of established body of legal doctrine (signified by the term Sharia) that needs to be adhered to, albeit modified, in these new cases under consideration. There is no appeal to any specific doctrine of any of the classical schools (i.e. *madhāhib*), but there is an impression from the language used in these legal decisions that the legal doctrine to which they are appealing is a simple matter of consensus between the different schools of Islamic law.

Similarly in another fatwa concerning the matter of endowing shares (*waqf al-ashum*), Resolution 181, the IIFA states that both permanent and temporary endowments are legitimate endowments. This is a prerequisite that they must establish because *sukūks* (Islamically legitimated stocks) are obviously temporary properties that would need this prerequisite in order to be legitimated. They also assert that an endowment may be movable, money or even a benefit.[21] It is interesting here that their definition of endowments seems to build on Abu Saud's, Grand Mufti of the Ottoman Empire in the sixteenth century, fatwa on cash *waqfs*,[22] and at the same time diverges from it in other respects. Abu Saud argued for the legitimacy of endowments (i.e. *waqf*) made from moveable properties as a way of legitimating the idea that cash to be made into a *waqf*. This is in light of the fact that the major jurists of the *madhhabs* did not approve of this.

The fact the IIFA's fatwa committee has now taken this point for granted indicates that Abu Saud's legal position has had a lasting impact on Islamic law. They have stated that cash *waqfs* can be endowable properties and hence no longer a point of controversy that needs to be debated as was the case in the sixteenth century. Also, like Abu Saud, the IIFA

claim that cash (as a particular example of a moveable property) can be made into a *waqf*. Yet the IIFA seems to depart from Abu Saud's position in terms of the temporariness of the endowment. It should be stated here that the second condition for endowments—according to the doctrines of Islamic legal schools—is that the endowment must be permanent. Abu Saud does not try to question this premise other than to establish that cash (*nuqūd*) can be considered permanent from the point of view of its interchangeability. Yet the IIFA's resolution goes further than all of these by declaring that temporary property can be made into a *waqf* (i.e. endowment). The rationale for this contrarian position to previously established legal doctrine is not provided in the text of the fatwa/resolution, but the ruling is, nevertheless, taken as it is a prerequisite for the establishment of their positions on endowing *sukūk*.

Once they state their general position on endowment, the IIFA is now in position to state their ruling on the legitimacy endowing *sukūk*. They claim that endowing *sukūk* are legitimate in view of the Sharia.[23] As these fatwas/resolutions scarcely provide the rationale for these legal positions in the text of the fatwas themselves, one can only presume that the disregard for the previous condition of permanence and immovability of endowment properties is the key factor that allows for the view that why shares and Islamic stock, despite the volatile nature of these properties, can be seen as endowment properties. The issue of legal rationalization will be treated in the next section.

Yet even after establishing that previously prohibited properties (moveable and temporary) can be turned into endowments, the same resolution of the IIFA places stipulations on these nontraditional forms of *waqfs*. In this regard, they first stipulate that the preeminent (*asl*) position in endowed shares is that they remain intact (*baqā'uha*) while the profits (returns) from these shares are to be used for the purposes of the endowment and not for trade on the market. This statement is an interesting parallel to Abu Saud's position concerning cash *waqfs* where he states that the cash endowed in a cash *waqf* remains essentially intact (although not actually intact) in the form of a loan/investment, because its likeness remains while the profits that are accrued from the cash are spent on perpetuating the aim of the cash *waqf* (i.e. for further loans and investments).[24] So, it seems that IIFA is building on the sort of legal positions and rationale that Abu Saud established earlier or at least is taking that legal rationale for granted.

In addition, the IIFA states that if the company, from which the shares were endowed, is liquidated or the value of the stocks (*sukūk*) has been paid, then the original endowment may be exchanged for other properties—such as estates or shares in other companies—based on the conditions of the endower or on the condition that the new property will serve the preponderant interests of the endowment.[25] This stipulation, also in way, mirrors the traditional position on *waqfs* where *waqfs* may be sold and exchanged for other properties if the new property is in a position to accrue greater benefits for the original endowment.[26]

It may be concluded from what has been presented thus far about the relationship of IIFA resolutions to the previously established doctrines of Islamic law that the IIFA seems to build on the already established rulings within the classical legal compendiums. However, these ruling show some important advancements, for example, in the understanding of what properties or benefits can be considered endowable, such as shares and stocks that were not financial instruments in the precolonial era. Here the circle is expanded to include new types of endowables that are the consequence of the invention of contemporary business products. Yet the acceptance of these new business products as legitimate endowables is built on previous advancements to the legal discourse, which later generations of jurists, such as Abu Saud, contributed to. Hence, the leap between the classical and the contemporary rulings, as evidenced by the IIFA fatwas, is not as wide as it might have been without the changes that had already taken place in the classical legal positions.

Types of Legal Rationale Manifested: In earlier statements I alluded to the fact that the IIFA's resolutions do not state publically the legal rationalizations for their positions. That said, the rationales for these fatwas must have been subject to robust debate between the muftis at the fatwa sessions that were held for the sake of settling these issues. Even though the complete rationale underlying individual fatwas is never fully and explicitly stated, some rationale for the IIFA positions is made public, although in brief detail. From these brief statements, we can make some interesting observations about the types of legal rationalizations employed by the IIFA to arrive at their conclusions.

The first interesting observation to note about the IIFA's approach to legal reasoning is that they issued two resolutions endorsing increased consideration for the legal precepts of *maṣlaḥah* (i.e. public interest), Resolution 141 in 2004,[27] and '*urf* (i.e. customary practice), Resolution 47 in 1988,[28] in contemporary fatwas. The fact that IIFA decided to take

resolutions explicitly endorsing the increased consideration of these two legal concepts, without endorsing other forms of legal reasoning, is significant because it seems to vindicate the reformist agenda of twentieth-century Muslim reformists, such as Rida and Makhlouf, who advocated for greater implementation of these two legal concepts in contemporary Islamic legal reasoning.

Even though the IIFA's resolutions on *maṣlaḥah* and '*urf* do not introduce much nuance to the classical formulation of these legal concepts, the resolutions' significance lie in the fact that they signify a new attitude or orientation among scholars/muftis of the IIFA councils (and possibly contemporary muftis), an orientation that gives priority to previously less pronounced Islamic legal concepts. More specifically, the muftis who comprise the IIFA's fatwa committees are trying to loosen the hold of textual (scriptural) hermeneutics on Islamic law, a hold that has been perpetuated through previously prominent legal concepts such as *qiyās* (analogical reasoning). In addition, these resolutions signal that they would like to loosen the hold of authority of legal precedence on contemporary ruling especially as represented in the legal doctrines of the Islamic legal schools (i.e. *madhāhib*).

For example, with respect to loosening the hold on established precedence of past legal doctrines, their resolution on '*urf* states the following: "The Muslim jurist, whether a mufti or a judge, should not be confined (*jumud*) to what is reported (*manqul*) in the books of (previous) jurists without giving due consideration to the changing of custom ('*urf*)."[29] This is an explicit statement that the IIFA are trying to open the doors for fresh legal reasoning and loosen the hold of the authoritativeness of *madhhab* legal doctrines, which make up the content of those legal compendiums that were mentioned in the resolution.

This is some indication that there is a greater receptivity among some postcolonial muftis to giving greater attention or pronouncement to legal reasoning based on public interest (*maṣlaḥah*) and custom ('*urf*) when formulating new legal rulings. By giving these context-based legal devices greater consideration in contemporary legal reasoning, they lessen the role of other legal precepts like *qiyās* (analogical reasoning) and precedence might play in the current legal discourse. There is some suggestion that this new attitude toward legal rulings and reasoning is not only theoretically endorsed, but actualized in the resolutions/fatwas of the IIFA. This is because there are occasional references to *maṣlaḥah* and '*urf* in the rationale of the textual pronouncements of their resolutions/fatwas.

For example, in Resolution 43 (*Al-Huquq Al-Ma'nawiyyah*), the IIFA took on the issue of legality of abstract rights with respect to company trademarks, copyrights, and inventions. It is interesting that the committee of scholars who deliberated on these issues took the position that those abstract rights are "the specific rights of the owner" and she/he has the right to gain monetary benefit from them. The justification that they give for such a position is that these abstract rights have acquired a monetary value in the contemporary '*urf* (customary practice).[30] The interesting point here is that the IIFA explicitly referred to '*urf* as the legal basis for this decision and not referring to scriptural authority or previous legal doctrine on this matter. This gives some indication that contemporary Islamic law may be taking on a more contextual hue in contrast to the textual- and precedent-oriented legal tradition. Moreover, this ruling is in some sense innovative from the point of view that traditional doctrines of Islamic law did not consider the legality of abstract rights as they were not part of customary practice of previous eras.

In another example, in Resolution 149, the IIFA tackled the issue of the legality of health insurance (*Al-Ta'min al-Sihi*). Previous to the colonial period, health insurance and similar type contracts would have been viewed as illegal from the perspective of classical Islamic law. The rationale for such a prohibition was that these types of contracts contain too much ambiguity (*gharar*) to be valid business contracts.[31] The ambiguity (*gharar*) in the health insurance contract lies in the fact that there is an exchange of something that is determined (i.e. cost of the insurance) for something that is undetermined (i.e. coverage if and when patient gets sick). Yet given the pervasiveness and overreliance on health insurance in the postcolonial globalized health system, IIFA took on the subject trying to bring a new perspective on the issue. IIFA could not ignore entirely the established ban on such contracts, but it had to take into consideration the pressing social circumstances surrounding contemporary health systems. Hence their strategy for legitimating health insurance was to find a way to minimize the issue of ambiguity (*gharar*), while at the same time declare the necessity of insurance in the current context.

Based on these pressing circumstances, the IIFA decided to legitimate insurance policies that are issued directly from health centers that provide health services. The justification being that the degree of ambiguity (*gharar*) in this kind of contract is too small or negligible and therefore not a violation of the norms of Islamic financial transactions. It is not quite clear how their legitimated type of insurance policy would have a lesser

degree of ambiguity than the conventional health insurance, as the IIFA does not provide the rationale for their decision, but one presumes that it may have to do with the not-for-profit status of these health centers. The reason for this assumption is that the IIFA stipulates conditions for the validity of such insurance policies, and in one of these conditions, it says that the health center may only charge the recipient for services that were actually rendered and not for presumed services in the case of private (conventional) insurance companies.[32] Although they do not explain the exact workings of their legitimated insurance policy, it may be surmised from the stated condition that the insurance contract would use the premium toward setting up some sort of declining balance for the insured where the insured party would use as needed and the balance would be returned to the insured. Hence, the level of ambiguity (*gharar*) of the exchange in this contract is negligible.

Yet there are more pronounced reasons, which are relevant to the issue of *maṣlaḥah* (public interest), for why such insurance contracts would be legitimate for the IIFA. According to the resolution, the need for health insurance has become so necessary for the preservation of self, mind, and progeny; these being aims that the Sharia seeks to sustain.[33] This rationalization for the legitimacy of health insurance is interesting because it is directly linked to the foundational legal principles (*maqāṣid*) of Sharia (i.e. the preservation of self, religion, mind, progeny, and wealth). It is based on these fundamental principles that *maṣlaḥah* or public interest is determined.[34] Hence, the IIFA, in invoking these principles in their rationale, essentially appealed to an argument of public interest (*maṣlaḥah*) when legitimating this restricted form of health insurance.

Furthermore, Resolution 181 on endowing shares, which I handled in the previous section, also refers to the aims (*maqāṣid*) of Sharia when arguing for the legality of these types of endowments. In the same resolution, it also refers to the criteria of *maṣlaḥah* when stipulating the conditions for when the supervisor of these endowed shares may engage in a transaction with these shares so as to preserve a preponderant interest (*maṣlaḥah rajiha*) for the endowment.[35]

All of these cases give an indication that when classical (i.e. discursive and hermeneutical authority) legal considerations are not a factor in establishing the rule or when then classical rulings do not meet contemporary circumstances, the IIFA resorts to more open-ended rational considerations of *maṣlaḥah* (i.e. utility) or '*urf* in their fatwas. So, their mode of legal rationalization seems to give quite a bit of prominence to these

concepts in ways that were not so explicit in the rationalizations of past rulings of Islamic law. Even though concepts like *maṣlaḥah* and '*urf* were classically formulated authoritative legal tools and even as they constituted the implicit basis for much of classical Islamic legal rulings, explicit appeal to them in past legal rationale was far more limited in scope than the way they have been appealed to in the fatwas of the IIFA. This may be a new development in the manner of postcolonial Islamic legal reasoning.

Preliminary Conclusions About Postcolonial Fatwas

In his study on the development of the Ḥanafī *madhhab*,[36] Brannon Wheeler asserts that in the postclassical period, future scholarship in the Ḥanafī school was only authoritative if they could demonstrate that their "conclusions were consistent with the conclusions of previous generation of scholarship" (Wheeler 1996, 228). I take this statement to mean more broadly that their conclusions are consistent in principle with the previous conclusions and not necessarily in exact content (i.e. they applied the same legal and interpretive principles of previous generations of jurists). This statement perhaps can be generalized to all of the classical legal schools of Islam.

But if this is how Islamic jurisprudence was conducted in the precolonial period, how could we describe this jurisprudence in the postcolonial era as represented in fatwas issued by the OIC's IIFA? With regard to this, I have two observations as to the character of postcolonial fatwas: first, it is a kind of historical jurisprudence in that it takes established legal norms and rulings as a reference point for its own rulings; second, it is a sort of hybrid jurisprudence in that it is not merely an extension of those historically established legal norms and rulings, but also a product of a new legal rationale that is addressing novel sociohistorical conditions. I will expand each one of these points in the subsequent paragraphs.

As for the historical nature of the postcolonial fatwa, I indicated that IIFA fatwas seem to assume a body of Islamic legal doctrine and principles that are the launching point for its own contemporary fatwas. For example in the fatwas (Resolution 147)[37] concerning the trade of international commodities and conditions that govern that trade (*Asila' al-Dawliyyah wa al-Dhawabit al-Ta'amul Fiha*), they draw several scenarios on how this trade can take place and then they pronounce their judgment with regard to each case. In each case, the IIFA makes reference in their rulings to already established legal rulings that legitimate their own position.

For instance, when they describe the first two types of transactions where both the commodity and its payment are exchanged on the spot or what is effectively on the spot as guaranteed by the marketplace, they declare that these transactions are legal in accordance to "the known conditions for sales."[38] The language "known conditions" indicates that there are previously established rules for which they are referring to and an indication that their judgments are taking place with clear reference to these established legal norms.

As for the hybrid character of the postcolonial fatwa, I showed how the IIFA's fatwas often employ more context-driven legal rationales such as *maṣlaḥah* and '*urf* in the legitimation of their fatwas and rely less on previously established authoritative doctrines of particular Islamic legal schools. Yet their fatwas do not strictly rely on legal concepts and methodologies like *maṣlaḥah* (public interest) or new deductions from scriptural (Qur'an and ḥadīth) proof texts, but are anchored in a set of formerly agreed upon legal norms and principles that must be reapplied and reinterpreted to meet the demands of new realities facing Islamic law. In this reapplication, fresh legal methodologies and approaches such as *maṣlaḥah* and '*urf* (custom) are being employed more overtly and frequently than may have been the case in the past. Hence, the legal products (fatwas) are not entirely new, nor are they a rehash of legal doctrines of the past. Thus, what you end up with is a product that is marked by hybridity in various ways.

But what does this characterization of the postcolonial fatwa tell us about the impact of the call for *ijtihād* (i.e. legal reform through new legal reasoning) made by the "modern" Muslim reformers? The IIFA's fatwas, as prototypical postcolonial fatwas, neither meet the complete overhaul of Islamic law that was demanded by some reformers like Rida and Turabi, nor are they a continuation of the Islamic jurisprudence of old. This is because IIFA's fatwas are not attempting to derive new legal norms from the scriptural sources of the law through the use of novel hermeneutical techniques as demanded by those reformers, nor do they stick to the preestablished legal positions as demanded by traditionalist muftis. Instead, the IIFA's fatwas display sufficient innovation in legal rulings and application of legal rationale that render their judgments as constituting a new *ijtihād*, but at the same time, they display enough conservatism and consistency with preestablished legal norms that there is a sense of continuity of character to their jurisprudence; and herein lies the hybrid nature of the postcolonial fatwa.

Judging from this, I can say that the Muslim encounter with colonial and neocolonial Western global order seems to have made an impact on their legal discourse that, while not totally effacing the legal tradition, has created a discursive shift in both the substance and form of the Islamic legal discourse. What this says is that Islamic law continues to evolve in response to constantly changing historical conditions even as the pace of change in the contemporary period takes on qualitative dimensions that seem to require a completely new set of rules to deal with that change. Despite the disrupting nature of historical change that has swept the Muslim world over the last two centuries, the evolution of Islamic law remains anchored in a set of legal principles that is both historically established and remarkably adaptive to the realities that confront it. So such shifts in Islam's legal discourse do not cause it to lose its authentic Islamic character.

Conclusion

I have tried to show in this study how contemporary fatwas may be contributing to the transformation of the Sharia and its legal tradition. This is because the Sharia in some respects arose organically out of the growing body of fatwas—scholarly resolutions to Muslim problems—over time. Of course, the fatwa was not the only ingredient that made up the Sharia, but it played a very instrumental role. Out of the materials of fatwas, particular forms of legal rationale emerged that would go on to frame the legal discourse of Islamic legal theory. In addition to this, the emerging Islamic legal doctrines were informed by these legal opinions turned edicts. Some of the legal authorities that uttered these fatwas came to occupy a special place in Islamic history so much so that legal institutions, *madhhabs*, became identified with them. All of these components, which have their discursive origins in fatwa, went into making a peculiar Islamic legal tradition that shaped subsequent legal practice.

Furthermore, fatwas were not simply instrumental in shaping Muslim law; they also played a pivotal role in representing and shaping Muslim society. This is so because of the very nature of fatwa production, which is both a discursive and dialogical engagement between the Muslim public and its religious specialists, served as an agent for social change. Thus, fatwas are discursive engagements in the sense that they are statements that instruct their practitioners on proper religious and social practice, and they are dialogical engagements because they serve as social exchanges between the public and the religious elite. In this way, fatwas functioned as indica-

tors of prevailing social attitudes because they often reflected what was being debated at any given time. But more importantly, fatwas facilitated social transformation by legitimating new practices that brought about change.

Despite the transformations taking place in Islamic law, it always maintained an essential identity of being a discursive legal tradition because it was grounded in the fundamental and normative discourses of the Qur'an and the early traditions. So no matter what form Islamic law took in the various stages of its evolution, it always was positioned with respect to these discourses. This is exemplified by the fact that even the quintessential Islamic legal practice of fatwa had its discursive origins in the Qur'an. In fact, fatwas were attempts at extending the reach of those Qur'anic norms in history. This is still very much the case today where contemporary Islamic legal discourse still draws its authenticity from newer interpretations of Qur'anic norms.

Yet despite this stability in the Islamic legal tradition, the Islamic legal discourse seems to be undergoing a discursive shift. Changes in the legal methodologies employed in modern jurisprudence, as for example the employment of *maṣlaḥah*, constitute a shift in the Islamic legal discourse toward a contextually based methodology of jurisprudence that moves away from the textually dominated discourse of precolonial times. That is because the employment of legal tools such as *maṣlaḥah* in legal rationale represents a mode of legal production based on social utility and context, whereas previous legal production relied more overtly on tools such as *qiyās* in its attempt to bind the law more tightly to sacred text.

My brief analysis of contemporary fatwas shows that *maṣlaḥah* has come to greater prominence as a tool in evaluating contemporary legal concerns and in the issuance of fatwas. This approach has its advantages in that it allows lots of room for social context to play a larger role when considering legal issues. This larger role for context-driven methodology has legal implication in that it takes place at the expense of the more literalist legal hermeneutics of sacred and authoritative discourses. In this case, fatwas become less a function of direct deductions from legal textual sources, such as the Qur'an and *ḥadīth*, and more a function of social circumstances.

Yet what remains to be seen is whether this contemporary trend among some Muslim thinkers and jurists represents a lasting shift away from the traditional, textually oriented legal methodology or a passing phenome-

non that will have little lasting impact. This question can only be answered with further research and reflection.

Notes

1. Also see Mahmood 2005, 114–115, for an interpretation of how to understand Asad's notion of tradition.
2. This statement can be said of any of the subtraditions within the larger Islamic discursive tradition not just its legal tradition.
3. See Hallaq 2004, 164–165, on this point.
4. See Lapidus 2002, 518–519, for how this process took shape in the case of Egypt.
5. See Waines's chapter "Islam" in Woodhead's *Religion in the Modern World*, 196.
6. See Waines's chapter "Islam" in Woodhead's *Religion in the Modern World*, 196.
7. See Waines's chapter "Islam" in Woodhead's *Religion in the Modern World*, 196.
8. Also see Asad 2003, 210.
9. For more on this notion of *talfīq* or amalgamation of law and its usage by Muslim nation-states, see Hallaq 2009, 448.
10. For more details, see Hallaq 2009, 411–412. Also Asad 2003, 210–211.
11. For more on this point, see Layish 2004, 96.
12. As quoted in Ihsanoglu 2010, 33.
13. Also see al-Ahsan (1988), 36.
14. See http://www.fiqhacademy.org.sa/ members (al-'adha') page for the current list of scholars who are members of IIFA.
15. This paper was obtained via email through personal communication with Qamar.
16. See pg. 12 of this chapter for examples of how reformists like Rida attempted to introduce sweeping changes to Islamic law.
17. See Qamar 2007, 15, fn. 1, who claims that these fatwas were called resolutions (*qarārāt*) according to the terminology of contemporary convention when agreements are reached at conferences.
18. *Sukūk* (sing. *sakk*) has been sometimes translated as Islamic bonds instead of stocks. Yet many within the Islamic finance circles have recognized that translating it as bonds is misleading because bonds

are usually denoted as debts to the issuer, while stocks are shares in an investment. Since bonds are debts and pose no risk of loss to the investor, they are considered as interest-bearing loans and hence prohibited in Islamic law, while stocks by design are profit- and loss-sharing equities that are permissible in Islamic law. Since *sukūk* are essentially equity shares that are made compliant with the norms of Islamic law, the more accurate denotation for them is stocks rather than bonds. See the AAIOFI *Shari'ah Standards* manual under the entry of Sukūk for elaboration of this point.

19. See a sample of these research studies that were presented to the muftis of the IIFA nineteenth Session on *Tawarruq* at the following site: www.isra.my. Accessed July 4, 2013.
20. Resolution number 178 (19/4) regarding "Sukūk, its contemporary applications and its circulation." http://www.fiqhacademy.org.sa/ accessed February 3, 2014. Translation from Arabic done by author.
21. Resolution 181 (19/7) www.fiqhacademy.org.sa accessed February 18, 2014. Also see translation of Resolution 181 at http://www.ifikr.isra.my accessed January 27, 2014. Translation by Ibrahim Ali and Mohammad Ashadi Mohd. Zaini.
22. For more on this fatwa, please reference my dissertation "Fatwa: The Evolution of an Islamic Legal Practice and its Influence on Muslim Society." Temple University, 2014.
23. Resolution 181 (19/7) www.fiqhacademy.org.sa accessed February 18, 2014. Also see translation of Resolution 181 at http://www.ifikr.isra.my accessed January 27, 2014. Translation by Ibrahim Ali and Mohammad Ashadi Mohd. Zaini.
24. MS. Ebussuud, Risale fi vakfi'l-menkul, Süleymaniye Ktp., Hacı Selima Ağa 299, vr. 10b. pg. 214.
25. Resolution 181 (19/7) "Endowing shares, sukūk, material rights and benefits", http://www.fiqhacademy.org.sa, 19th Session, accessed February 18, 2014. Translation rendered was done in conjunction to referencing to the translation of this resolution by http://www.ifikr.isra.my accessed January 27, 2014. Translation by Ibrahim Ali and Mohammad Ashadi Mohd. Zaini.
26. See this ruling stated in Abu Saud's fatwa on cash waqfs MS. Ebussuud, Risale fi vakfi'l-menkul, Süleymaniye Ktp., Hacı Selima Ağa 299, vr. 10b. pg. 214.

27. See full resolution at http://www.fiqhacademy.org.sa accessed March 21, 2014.
28. See full resolution at http://www.fiqhacademy.org.sa accessed March 21, 2014.
29. See Resolution 47 on '*urf* at http://www.fiqhacademy.org.sa accessed March 21, 2014. Translation from Arabic to English by the author.
30. Resolution 43 (1988), regarding "Abstract Rights" at http://www.fiqhacademy.org.sa accessed Febuary 4, 2014. Translation by author with assistance from translation found at Fatwa and Translation Unit of: http://www.ifikr.isra.my accessed January 27, 2014.
31. See Ibn Rushd's *The Distinguished Jurist's Primer*, V.2, 179 (translation by Nyazee) for discussion of the criteria for sale contracts that contain *gharar* (i.e. ambiguity) and the illegitimacy of such contracts.
32. See Resolution 149 (16/7) *On Health Insurance*: http://www.fiqhacademy.org.sa accessed February 20, 2014.
33. See Resolution 149 (16/7) *On Health Insurance*: http://www.fiqhacademy.org.sa accessed February 20, 2014.
34. See IIFA Resolution 141 *On Maṣlaḥah* for the connection between *maṣlaḥah* and the aims (*maqāṣid*) of Shariah: http://www.fiqhacademy.org.sa. Accessed January 28, 2014.
35. Resolution 181 (19/7) "Endowing shares, sukūk, material rights and benefits", http://www.fiqhacademy.org.sa, nineteenth Session, accessed February 18, 2014.
36. Brannon Wheeler's *Applying the Canon of Islam*.
37. See http://www.fiqhacademy.org.sa. accessed March 25, 2014.
38. Resolution 147 (16/5) "International Commodities and the Conditions of Their Transactions." http://www.fiqhacademy.org.sa accessed February 20, 2014.

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CHAPTER 3

Fatwās on Mohamed Bouazizi's Self-Immolation: Religious Authority, Media, and Secularization

Ahmad Najib Burhani

Introduction

Suicide acts were almost unheard of in Muslim communities or at least the numbers were low compared with other communities. As stated by Theodor Nöldoke, Islam is '[a] religion amongst the followers of which suicide is almost absolutely unknown' (Nöldeke 1892, 72; cf. Rosenthal 1946, 240).[1] However, during the recent Arab Spring, the score of self-immolations in Arab countries has surprised many people. In the six months following the self-immolation of Mohammad Bouazizi on December 17, 2010, over 100 people committed self-immolation or attempted suicide in Tunisia, Algeria, Morocco, Egypt, Saudi Arabia, and other Middle East and North Africa (MENA) countries as a protest against their governments (Ghasemilee 2012; Avon 2012, 152; Wright 2011, 20; Khosrokhavar 2012, 172–176; Ghazi 2011; Filiu 2011, 20). In addition to the recent acts of self-immolation, there is also a growth of proverbial or figurative expressions that have a strong connection with suicide or self-immolation

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in the daily life of Arabs. This can be seen as an indication of how people in the Arab culture perceive immolation or self-inflicted death.[2]

Responding to the phenomenon of self-immolation, some *ulamā* have tried, through conventional and new media and also sermons from the pulpit, to prohibit or even condemn the act of self-immolation. However, it seems to have very limited impact in preventing self-immolations during the revolution. In this chapter, I intend to answer the following questions: Why did people not heed the voice of *ulamā* even though it was disseminated widely and regularly through various conventional and new media? Is the phenomenon of self-immolation a symptom of secularization and an indication of the growth of civil religion? How to explain the rift between people and *ulamā* on the religious status of Bouazizi's self-immolation?

To answer the above questions, I have divided this chapter into three parts: (1) general discourse on martyrdom and suicide in Islam, (2) the martyrdom (or suicide) of Bouazizi, and (3) religious authority, secularization, and the role of media. Using interpretive methods, I carefully read and studied a collection of fatwas on martyrdom and suicide in Islam, particularly on Bouazizi's self-immolation and other self-immolations in recent years; analyzed reports from magazines, newspapers, and TV news on the Arab Spring; and examined YouTube videos on this case. For the debate on the status of Bouazizi, I examined several social media, particularly Twitter and Facebook. After studying the data qualitatively, I argue, first, that unlike Christian and Shi'i Islamic perspectives, the concept of martyrdom in Sunni Islam is mostly related to struggle, not suffering or living under oppression. Second, Sunni *ulamā* almost unanimously agree that Bouazizi's self-immolation cannot be considered an act of martyrdom. However, they have different ways to respond to this act, and Yusuf al-Qaradawi's comment can be seen as the most sympathetic response from prominent religious leaders. In contradiction with the perception of *ulamā*, some Tunisians consider Bouazizi a nationalist martyr. The notion of biopolitics and the growth of civil religion explain why some Tunisians have a different view from *ulamā*. Third, in the context of religious media, bombarding people with fatwas and quotations from the Qur'an and hadith, through various media, was not effective in winning the hearts and minds of people. In this modern life, people are more and more living in a secular world that has become a significant part of their life. Quoting Charles Hirschkind (2011, 634), 'The secular is the water we swim in'. We ourselves have been partly cultivated, or at least influenced, by a secular environment in the global world we live in today. Although the prohibi-

tion of committing suicide was disseminated through various means, with the growth of secularization and civil religion, some people just ignored and neglected it since Muslim acts were not mainly determined by their status as Muslims but more by mundane needs. It is the interpretation of religion that understands psychosocial feelings of people, or based on social context, that is mostly accepted by society.

On Martyrdom in Islam

The concept of martyrdom has been used in various contexts in Islam. A prophetic tradition mentions that there are seven categories of martyrs. Included in the category of martyr are those who drown in the sea and a mother who dies while delivering a baby. Al-Suyuti mentions a number of martyrs beyond the seven categories, including anyone who wishes to die as a martyr although he dies on his bed (Cook 2007, 33–34). Although there are various types of martyrdom in Islam, people usually have a common understanding that this concept mostly refers to those who die at a battlefield in the way of God. And although Muslim jurists would treat the corpses of those who die because of natural disasters, such as tsunami and earthquake, the same way as they treat the casualty of battle for the sake of Islam, they understand that there are two different types of martyrdom. This is the reason why some *ulamā* then differentiate between *shuhadā' al-dunya wal-ākhira,* namely military martyr, and *shuhadā al-ākhira,* non-military martyr (Kohlberg 1997, 294).

The strong relationship between martyrdom and *jihād* is because the history of the early stages of Islam is featured by battles. At the beginning of Islam, the number of Muslim people was very few. During the battle of Badr for instance, which is the decisive battle between Muslims and non-Muslims, Muslims were far outnumbered by the Meccans. The same condition occurred during the battle of Uhud: opponents also outnumbered the Muslim warriors. According to Khaled Abou El Fadl (2003), to ensure the survival of Islam the Prophet encouraged his followers to go to the battles and he promised them a vast reward, incomparable to any other deeds, if they die in those battles. Whoever dies in the battle, they would be martyrs with all their tremendous rewards from God such as having a special place in Paradise (next to the Throne of God), skipping the punishment of the tomb and suffering in the Day of Judgment, and having the right to intercede for his relatives. It is obvious that the context of early Islam plays a significant role in the process of creation of the martyrdom

tradition. Without strong motivations, it is impossible for Islam to survive and then dominate the Arab world at that time.

Different from Christianity in which martyrdom becomes an important doctrine, in Islam, it is often considered not part of its major doctrine and Prophet Muhammad is not even hailed as a martyr. If dying in the battlefield was the major doctrine of Islam, there would not be a lot of winning in the history of Muslim battles. The battlefield would be the ideal place for suicide. History tells the opposite thing; Muslims won most of the battles between Muslims and non-Muslims in the early stages of Islam. This result would be absolutely odd if the motive for waging war is just to be martyrs, like those jihadists in contemporary times as suggested by Olivier Roy (1994, 66).[3] The general doctrine in Islam in waging war is *baina husnayayn*, which means either victory or die (Asad 2007, 52). In this context, it would be more reasonable if we understand victory as far more important than becoming martyrs.[4]

Perhaps it is true that martyrdom in Shi'i Islam is a major theme, but not in Sunni. This is because the history of the Shi'i is featured by repression from governments that were mostly following Sunni Islam. However, it is important to note that it is not death that makes someone a martyr but his struggle or *jihād* against tyrants and unjust rulers that make him a martyr. Husseyn, who becomes a prototype of martyrdom in Shi'ite Islam, is dead because of his opposition against Yazid, an unjust and tyrant ruler from a Shi'i perspective. This is the reason why a number of imams who did not die in the battlefield are also labeled as martyrs.

In general, either in Sunni or in Shiite tradition, the theme of martyrdom is less important than in Christianity.[5] Early Christianity is a history of repression from government and its rival religion, that is, Judaism. In contrast to Islam that maintained political power and gradually responded to oppression from pagan Arab tribes with war, Christianity only enjoyed political success a long time after Jesus. Suffering is the portrait of early Christianity and Jesus himself represents the supreme suffering by his crucifixion. Consequently, martyrdom in Christianity is mostly associated with suffering and absolute commitment in defending the faith. From this historical perspective, it becomes understandable why martyrdom in Christianity is a very important doctrine.

On Suicide in Islam

In his article entitled 'On Suicide in Islam', Franz Rosenthal narrates a story about the attempt of the Prophet Muhammad to commit suicide during his early years of prophethood. Rosenthal (1946, 240) writes, 'It is said that on several occasions during the prolonged period devoid of revelations which followed Muhammad's first experience of divine inspiration, the Prophet in desperation ascended the highest hill near Mecca in the intention to hurl himself from its top and thus end his life'. Regardless of the authenticity of this story, Muslim scholars unanimously agree that suicide (*intiḥār*) is prohibited in Islam.

Several verses from the Qur'an and a number of hadith have been referred to as a theological basis for the prohibition of suicide. Among them are Q. 2.195 ('do not make your own hands contribute to (your) destruction'), Q. 3.145 ('nor can a soul die except by God's leave, the term being fixed as by writing'), and Q. 4.29 ('do not kill (or destroy) yourselves'). The prohibition of suicide is strongly mentioned in hadith. Among them: narrated by Jundab, the Prophet said, 'A man was inflicted with wounds and he committed suicide, and so Allah said: My slave has caused death on himself hurriedly, so I forbid Paradise for him'.[6] In a hadith narrated by Abu Huraira, the Prophet said, 'He who commits suicide by throttling shall keep on throttling himself in the Hell Fire (forever) and he who commits suicide by stabbing himself shall keep on stabbing himself in the Hell-Fire'.[7]

The rationale behind the prohibition of suicide, as quoted by a number of scholars such as Hashim Kamali (2008), is because life does not belong to human beings. It is 'a God given gift … and not the creation of its bearer, hence the latter does not have the right to destroy it' (Kamali 2008, 283). This reasoning certainly assumes that the audiences are the believers in God and the existence of the afterlife. The above reasoning, therefore, would be inconceivable for nonbelievers.[8] As stated by Rosenthal (1946, 239), 'Only in the assumption that the life of an individual is continued in some form or other after his death and that he will then be punished for his deed can there be not the slightest doubt that suicide in fact is a harmful act'. This is among the reasons why the number of suicides in secular society is higher than the number of suicides in religious society.

Martyrdom (Or Suicide) of Bouazizi

On December 17, 2010, Mohamed Bouazizi, a 26-year-old underprivileged street vendor, set himself on fire in front of the government's municipal office in Sidi Buzid, a small rural town in Tunisia.[9] The incident occurred after a policewoman confiscated Bouazizi's vendor cart, produce, and scale. Other reports mention that besides confiscation of his goods, he also felt personal humiliation of allegedly having been insulted and slapped by that police (Andersen 2011). After this altercation, Bouazizi immediately ran to the government office to complain and ask them to return his scale and wooden cart, but to no avail. 'Humiliated and dejected, Bouazizi, the breadwinner for his family of eight, went to the provincial headquarters, hoping to complain to local municipality officials, but they refused to have an audience with him' (Schraeder and Redissi 2011, 10). 'At 11:30 a.m., less than an hour after the confrontation with the policewoman and without telling his family, Bouazizi returned to the elegant double story white building with arched azure shutters, poured fuel over himself and set himself on fire' (Abouzeid 2011).

Bouazizi's self-immolation was the maximum response that he could do against the oppression from his own government and the corrupt procedure for socioeconomic advancement that he had felt for years. He was the primary breadwinner for his family and he had been working in the market since he was a 12-year-old. His poverty prevented him from going to college and having access to capital (Ryan 2011). His cart, fruit, and scale were his life and the only means of livelihood. With the confiscation, 'he had been deprived of the only thing that stood between him and starvation—the loss of his place in the only economy available to poor Arabs' (Soto 2011). Bouazizi experienced living under repression from his own government leaders, a condition shared by many poor people in Sidi Bouzid and other parts of Tunisia. In the statement of Bouazizi's sister, 'In Sidi Bouzid, those who do not have connections or do not have money to pay bribes are humiliated and not allowed to live' (Ghazi 2011). In short, Bouazizi and people like him have been 'positioned as a sort of subclass' and 'inherently of lesser humanity' in their own country and by their own leaders (Jacobson 2011, 11–12). It is this fact that made his opposition to the local authority and, ultimately, his death resonate broadly and strongly and, thereafter, become the trigger of the Arab Spring. Since his self-immolation, Bouazizi has become the symbol of the plight of the underprivileged Tunisian and that of opposition to the dictator.

Despite tremendous impact of Bouazizi's self-immolation in unleashing waves of protest and toppling dictators in Tunisia and Egypt, a number of *ulamā* declared, through fatwa or other opinions, that Bouazizi's act cannot be considered an act of martyrdom (*al-ʿamalīyyāt al-istishhādīyya*). Instead, it is an act of suicide (*al-ʿamalīyyāt al-intiḥārīyya*). The Mufti of Tunis, Othman Battikh, for instance, condemned Bouazizi's self-immolation outright. He says, 'Suicide (*al-intihār*) and attempted suicide is one of greatest sins. In Islamic law, there is no difference between suicide and homicide'.[10] Battikh also advised people that those who die because of suicide, with whatever method that they use, their body should not be washed, prayed for, and buried in a Muslim cemetery. A Salafi group in Egypt, the Ansar al-Sunnah al-Mohamadiya movement, has a similar view with Battikh. According to the secretary general of this movement, Ahmed Youssef, those who commit suicide in 'Tunisian style' are apostates and will immediately go to hell.[11] In the context of his suicide, Al-Azhar, the most prestigious university in the Sunni world, also supported the view of the Salafi group by issuing a condemnation for suicide following the self-immolation of Bouazizi. Al-Azhar's spokesman, Mohammed Rifa al-Tahtawi, states, 'Sharia law states that Islam categorically forbids suicide for any reason and does not accept the separation of souls from bodies as an expression of stress, anger or protest'.[12] *Ulamā* in Saudi Arabia were also quick in responding to the phenomenon of suicide in the Arab world. Grand Mufti of Saudi Arabia, Sheikh Abdul Aziz bin Abdullah al-Sheikh, states that Islam 'bans suicide even if living conditions are hard. To commit suicide by setting oneself on fire is a horrendous crime'.[13] In line with him, Saudi *ulamā* Shaikh Nasir ibn Sulayman al-Umar, also declared that suicide as done by Bouazizi is an evil and is strongly forbidden in Islam.[14] As stated by Avon (2012, 157), 'Hezbollah has applauded the revolutionary action against the corrupt Tunisian regime, but without commenting on self-immolation'.

The only sympathetic comment on Bouazizi came from Sheikh Yusuf al-Qaradawi, the president of the International Union of Muslim Scholars (IUMS). In his TV program, '*al-Sharīʿa wa al-Hayāt* (Sharia and Life) hosted by the Qatar-based television station *Al-Jazeera,* Qaradawi commended Bouazizi for his self-sacrifice and for sparking the Arab Revolution. He then enjoined Tunisians and all Muslims 'to pray to God to forgive Bouazizi for committing what Islam considers the gravest sin of committing suicide' (Global MB 2011).[15] The statement in the video shows that Qaradawi still considers Bouazizi's self-immolation as an act

of suicide, not an act of martyrdom, although he did not condemn it. He further asked youths to value their lives; it is not their bodies that should be burned, but the tyrants.[16] A few days after this statement, Qaradawi further softened his view by stating that, 'Bouazizi's self-immolation was justifiable because it was in protest of hunger and humiliation' (Ghazi 2011; al-Qaradawi 2011).[17]

Following the steps of other *ulamā* in the Middle East, Shaykh Hamza Yusuf in the United States also gave his view on Bouazizi. He believes that suicide is suicide. However, Bouazizi's self-immolation 'has ignited the Arab world in flames, achieving in death what he could not in life—sense of purpose and meaning—indubitably more than all the suicide bombers around the globe combined. His was an act of a desperate man who chose not to kill others but instead to light himself on fire in protest'. Yusuf did not issue any fatwa on Bouazizi but he believes that martyrdom operations in Israel are worse than Bouazizi's self-immolation.[18]

Opposing the view of *ulamā*, however, people of Tunisia have considered Bouazizi a martyr. His picture with words of praise became a significant feature during the revolution. Some banners and placards displayed his smiling face and contain words like *al-shahīd* (the martyr), *sharāra intifāḍa al-karāma al-shahīd Muḥammad al-Būʿazīzī* (sparking intifada, the dignity, the martyr, Mohamed Bouazizi), *ramz al-karāmawa al-hurriya* (symbol of dignity and freedom), Mohamed Bouazizi the legend of Tunisia, liberté le martyre Bouazizi, Bouazizi héros Tunisie, *shukran laka laqad fataḥta ṭarīq al-ḥurry* (thank you for opening the way of freedom), revolution of freedom and dignity, and *kullunā al-Būʿazīzī* (we are all Bouazizi). In the list of comments to Yusuf al-Qaradawi's video statement on Tunisian Revolution and Bouazizi's self-immolation, many people declared that Bouazizi is a martyr or at least some people prayed to God to forgive him and accept him as a martyr.[19] After the success of the revolution in toppling Ben Ali, many people came to Sidi Bouzid and visited the family of Bouazizi to give thanks for his sacrifice. His simple grave has been treated like a grave of a nationalist martyr with a Tunisian flag covering it. More than that, as a recognition of his sacrifice that successfully ushered in a new chapter of history of Tunisia, a statue of his wooden cart was established in Bouazizi's hometown, the government has issued a post stamp with his face in it, his name was used to rename a square in Tunis, and so on. All of these martyr narratives have overshadowed the comments and fatwas from *ulamā* that consider him as committing suicide.

Religious Authority, Secularization, and the Role of Media

Bouazizi's self-immolation can be seen as a key point to analyze contemporary development of religiosity not only in Tunisia, but also in the whole of the Arab world. It is not only related to the religious debate on his death, whether it is martyrdom or suicide, but also related to the division of Arab society between secular people, who tend to promote civil religion, and Islamists, who try to make the Arab world become more Islamic. In the context of religious media, the self-immolation of Bouazizi can be seen as a test on whether bombarding people with verses from the Qur'an is an effective way to win their hearts and minds or if it is more important to deliver the teachings of Islam in accordance with humanity. In the following part of this chapter, three issues will be discussed in turn, namely the authority of *ulamā*, secularism and civil religion, and the role of media.

Authority of Ulamā *and Biopolitics*

When Yusuf al-Qaradawi supported suicide operations committed by Palestinians against Israel, and called it *amaliyyāt fidāiyya* (acts of sacrifice), many people were surprised with his position. Challenges and oppositions to his stance do not only come from non-Muslims, but also from other *ulamā* and Muslim scholars, such as Mohammad Hashim Kamali (2008, 286), Mahathir Mohamad (Kamali 2008, 286), Hamza Yusuf (2011), and other *ulamā* from the Middle East. Responding to this opposition, Qaradawi, who is known as a proponent of *al-Wasaṭiyya* (moderatism), does not move from his position. He believes that the circumstance in Palestine is the condition that makes suicide attacks against Israel religiously legitimate. He says, 'When I was asked, in London, how I could permit martyrdom operations in Palestine, I said that they are a necessity, because these people want to defend themselves, the things that are holy to them, and their land. I said to them: 'You want them to stop the martyrdom operations? Then give them Apache helicopters, planes, tanks, and missiles, and then they will abandon martyrdom operations.' They do not have bombs, so they turn themselves into human bombs. This is a necessity'.[20]

Qaradawi further stated that over 300 Muslim scholars supported this position. However, he sanctioned suicide attacks only in Israel, not

in other places. The Palestinians have been humiliated and oppressed by Israel for decades. They have no other means to fight against Israel except using their bodies as a weapon. Qaradawi believes that the human body becomes the weapon of the weak in their fight against the oppression and it is a sign of justice from God. 'Through his (Allah) infinite wisdom he has given the weak a weapon the strong do not have and that is their ability to turn their bodies into bombs as Palestinians do', says Al-Qaradawi (Abdelhadi 2004).[21]

In line with the explanation from Qaradawi, May Jayyusi, elaborated by Talal Asad in his book *On suicide bombing* (2007), perceives the condition of people living in Palestine is like *homo sacer*; they have no value and can be killed by Israeli army at any time. They have a state but it is under Israeli occupation. Their state is only recognized by a limited number of countries. The map of their country is subject to change. The borders of their country move from time to time. Life and death for them are unpredictable and the difference between these is very thin. If *homo sacer* are those who can be killed but not sacrificed, Palestinians are those who can be sacrificed but not killed. They prefer to be sacrificed in a martyrdom mission than to be killed by Israeli troops. Joining martyrdom operations is the only way to avoid being killed by Israeli troops (Asad 2007, 46–50). Oppression, occupation, and state atrocities should be responsible for these suicide attacks. Quite similar to Jayyusi, Bruno Etienne believes that suicide operations in Palestine reflect a 'death wish', using a Freudian term, culture among Palestinians (Asad 2007, 52). Palestine has been experiencing a long-term war and oppression: under the occupation of the Ottoman, precolonial war, war of conquest, colonial war, dictator and authoritarian regime, and the establishment of and oppression from Israel. These situations psychologically make them feel that death is better than life or make their 'body "ready to blow"' (Hanafi 2009, 118).

What is the difference between the condition of Palestinians living under the oppression of Israel and Bouazizi's condition under the oppression of Ben Ali? Why did the act of suicide in the former become classified as *amaliyyāt istishhādīyya,* while the latter cannot be included in this category? Some scholars (Soto 2011; Jacobson 2011, 5; Pugliese 2014; Uzzel 2012) show that the fate of Bouazizi was not different from Palestinians under the oppression of Israel. He and other young people in Arab countries 'feel that they have become a *Homo sacer* … which means that this was the revolt of "bare lives", of defenseless hungry bodies that the regime has stripped of political identity' (Hanafi 2012, 202). Using the perspective

of biopolitics, Uzzel (2012), for instance, explains that it is only through his self-immolation that Bouazizi can gain political agency. Before his self-immolation, Bouazizi had tried to ask the authority to return his scale and cart but of no avail. He was even rejected to see people in the municipal office. He could not sway his protest with words. It was only through the extreme act of his self-immolation that his voice was finally heard. Self-immolation was his only way of communication to make himself be heard. Using Jacobson's illustration, 'Unable to verbally demonstrate the way in which he has been wronged, Bouazizi opens up his skin and demands effectively, "look! Here is my pain"' (Jacobson 2011, 17).

There are many reports and studies, such as by Schraeder and Redissi (2011) and Alec Jacobson (2011), about the oppression of Ben Ali's regime to Bouazizi and people like him. As explained by Michel Foucault (1990, 136), among the characteristics of sovereign power is its 'right to *take* life or *let* live'. This power of 'life and death' is usually exercised toward 'things, time, bodies, and ultimately life itself' (Foucault 1990, 136). After the confiscation, Bouazizi did not have anything except his own body and he rejected to submit his last possession to the corrupt sovereign. He decided to burn himself alive before the government was able to take it. By burning his own body alive, Bouazizi challenged the subjugation from the sovereign under the dictatorship of Ben Ali and rebelled against the sovereign's power to take everything from him. As stated by Uzzel (2012), 'The destruction of one's own body can be seen as a rejection of the subjugation of the sovereign power, the rejection of the Foucauldian biopower, by reclaiming one's own political freedom and agency through death'. Through a process of reflection, Bouazizi's suicide is often interpreted as a protest against the corruption and oppression by government officials of the poor people of Tunisia and, finally, against the dictatorship and authoritarian regime of Ben Ali.

From the mentioned analysis, some people argue that Bouazizi's self-immolation should be understood in the same context as Palestinian's suicide attackers. Shaikh Hamza Yusuf of the United States, for instance, even considers Bouazizi's self-immolation more respected than Palestinian suicide bombers. With their suicide, Palestinian suicide bombers attempted to kill randomly as many people as possible, which could include innocent people or even supporters of Palestine, whereas in Bouazizi's case, his self-immolation was not intended to hurt anybody else. Hamza Yusuf says, 'I do not condone the act of suicide bombing or any form of suicide, as I

consider both to be of the same ilk, and in fact the former is worse in my estimation due to the extended harm to others' (Yusuf 2011).

Based on the above logic, it seems inconceivable to consider Bouazizi's self-immolation a suicide that would be punished severely in the Afterlife, while Palestinian suicide bombers would be given the best rewards in the Hereafter. To understand why some *ulama* gave different treatment to these two cases, it is important to analyze the sociological and theological context of martyrdom and suicide. Suicide is an individual work and there is no ritual before someone kills himself. Different from individual suicide, in most cases, suicide operations are not individual work. There are at least four parties involved in suicide missions: actor or perpetrator, organization or operator, society, and deity or God (Ferrero 2006; Tosini 2009; Pedahzur 2004). The role of religion in this perspective is giving sacred justification for the act. Religion could provide the way for demonizing the target and releasing the feeling of guilt for killing civilians. Society will determine whether an act could be considered altruistic or fatalistic. Organization prepares and trains the actor mentally and physically so that he becomes steadfast in the act. Organization also will guarantee that the name of the actor would be recorded in the history of society and the family would receive the rewards from his act. The actor perhaps has varied motives (revenge, social recognition, religious motive, death wish), but organization, society, and religion will cover his lesser individual motives with something greater and praiseworthy motives.

The above criteria fit with Sunni tradition where martyrdom is mostly associated with struggle, not suffering. Therefore, it involves many people who help the would-be martyr in preparing his martyrdom operation. Ritual, perhaps, can be seen as the most important element in the process of martyrdom. The function of ritual is to consecrate the act. It is this ritual that was missing in Bouazizi's self-immolation.[22] Regardless of the impact and whether the martyr successfully accomplishes the mission he carries out, he will still be considered a martyr because a religious organization or *ulamā* consecrates his act. The question is whether someone would be considered a martyr if his act of suicide has a great positive impact in society, as done by Bouazizi, but there is no consecration of the act during the process of the act. If the basis of the title of martyr is the impact or greater cause, then he should be called a martyr, although no one can guarantee, before it happened, or predict that Bouazizi's act could trigger the Arab Spring.

Qaradawi's comment on Bouazizi's self-immolation seems to avoid not only reckless condemnation of his death but also encouragement of the copycat self-immolation. At first, Qaradawi's reluctance to call Bouazizi a martyr seems to show his insensitiveness regarding the sacrifice of Bouazizi and lack of understanding of the essence of religion that teaches people how to fight against oppressors, tyrants, and dictators. However, if he declared Bouazizi as a martyr, he would face difficulties in dealing with copycat self-immolation. As stated by Uzzel (2012), 'Part of the reason for it being such a powerful image is its relative infrequency. The more self-immolation occurs as a form of protest, the less powerful each subsequent image becomes, and the story, and therefore the issue, is less likely to be publicized. The hundredth Tunisian to self-immolate after Bouazizi would have had little to no impact as a political act, even if the reasons behind it were exactly the same as Bouazizi. The vast majority of self-immolations have little to no political effect'. The case in Tibet can be used as an example. Over 100 people have burned themselves in Tibet since 2009 (*The Economist* 2013). However, as elaborated by Uzzel (2012), instead of gaining their demand, the Chinese government even further increases its repression.

Instead of encouraging people to follow Bouazizi, Qaradawi asked them to value their lives. Therefore, Qaradawi seems to believe that the law on suicide still applies, but Bouazizi is an exception. Qaradawi's position in not condemning Bouazizi and asking people not to follow him seems to be the ideal one. The more people devalue their lives, the more they have less value. Justifying self-immolation will only make people take their own lives easily just because of trivial matters. Moreover, Bouazizi's self-immolation is not the first and the last. Before him, there was someone in Monastir who burned himself, but it did not spark the revolution (Khondker 2011, 677). After him, more than 100 suicide acts and attempts occurred in Tunisia. By declaring Bouazizi a martyr, Qaradawi would also be asked to give the same treatment to people before and after him. Perhaps, Jacobson's description on the role of Bouazizi can give a clue why Qaradawi did not call him a martyr, besides Qaradawi's religious reasoning. Jacobson (2011, 7) writes, 'The condition for uprising existed, everyone felt pain, and action would have been taken somehow regardless of Bouazizi. To give the man more credit than that is to distract from the multitude of voices that came together during the course of a month to oust Ben Ali'.

Furthermore, it seems there are some other considerations that need to be revealed about why *ulamā*, especially Qaradawi, were reluctant to call Bouazizi a martyr. Different from Palestinian suicide bombers who fought against Jews, in Tunisia, the enemies are fellow Muslims. It becomes conceivable that the affirmative comment on the martyrdom of Bouazizi only came from the Shi'i community. In the history of Shi'ism, what they perceived as oppressors or tyrants or dictators are not only those from different religions, but also fellow Muslims, particularly the Sunni majority. Besides the religious status of the enemy, for the outsiders, life in Tunisia is not the same as in Palestine. Tunisia is often considered among modern and successful countries in the Middle East. Therefore, considering the life of Bouazizi as 'bare life' is inconceivable for outsiders.

Different from *ulamā* that requires ritual as a condition to make someone a martyr, Tunisian people see more on the impact than the process. And they see Bouazizi's self-immolation could represent their feelings and plights. With the great impact of his self-immolation, people of Tunisia feel they need to thank Bouazizi for his sacrifice and consider him a martyr or more exactly, a nationalist martyr. Had the revolution failed, however, perhaps Bouazizi would not be considered a martyr. The government, perhaps, would create an image that Bouazizi has a mental problem or some other accusation to defame him.

Secular Versus Islamist

Besides providing a problem for *ulamā*, the discourse on the self-immolation of Bouazizi has also played a significant role in giving the image that the recent Arab Spring is a secular revolution. Different from the Islamic Revolution in Iran in 1979 where religion became the dominant voice, there was minimum religious symbolism, to say the least, in the Arab Spring. Instead of supporting the revolution, some *ulamā* even took the opposite side by defending the dictators and condemning the revolts. Religious people were not only described by a number of presses as absent during the revolution, but they were often portrayed in the opposite side of the waves of revolts. After the revolution, however, the Islamists won with a wide margin during the elections in Tunisia and Egypt. Some observers, such as John Bradley, then described this by stating that the Islamists have successfully hijacked the revolution (Bradley 2012).

The case of Bouazizi's self-immolation can be seen as an important example of how some *ulamā* have been portrayed as standing in the opposite side of the revolution. Several scholars such as Khosrokhavar (2012) and Dominique Avon (2012) use this case as proof that Arab society is becoming more and more secular. Based on the testimony of some survivors of suicide attempts, Avon (2012, 156) says, 'If there is indeed an awareness of religious transgression, suicide is sought not because of but in spite of that fact'. The way people in Tunisia hail and respect Bouazizi is perceived by Khosrokhavar (2012, 173) as an indication of 'a widening divide between the religious meaning of martyrdom and its secular, popular signification'. The fatwas from *ulamā* that prohibit self-immolation, in their view, found deaf ears or have only a very limited impact. Instead of listening and following the charge from *ulamā* that Bouazizi committed suicide, Tunisian people have hailed him as a martyr and hero. Using Robert Bellah's notion of civil religion, some scholars see that Tunisia and other Arab countries have created their nationalist martyr, neglecting partisan commitment to religion (Halverson et al. 2013). The large number of copycat self-immolation is also a proof that people tended to neglect the fatwa from *ulamā*. 'The self-immolation pattern underlines the new content of the social movements in the Muslim world, in which violence is denounced and the peaceful activist refuses to engage in it, as was the case with the classical Islamic martyrdom … Self-immolation in the Muslim world points to the large secularization in many Arab societies' (Khosrokhavar 2012, 178). In line with Khosrokhavar, Avon (2012, 153) highlights that high rate of self-immolation in Aljazair and other Arab countries is 'an indication of secularization'.

The meaning of secularization here is not emptying God from public space or separating religious affairs from other affairs. Instead, following Charles Taylor (2007, 3), in the Arab world nowadays, 'religion is not the only option to see a certain issue, but it becomes 'one option among others''. When religion or religious people hesitated to give Bouazizi the title of martyr, people just created their own 'martyr-ology' without referring to Islam. People of Tunisia have created their own system and techniques on how to deal with the oppression from their own government. These techniques were not created through training or education, but through socioeconomic necessities and difficulties of living in that country. In these techniques of survival, the death of Bouazizi carries a message to the world and tells them about the fate of Tunisian people. Because of the important meaning of Bouazizi's death, they perceived him as a hero

and martyr. Against the government and state-*ulamā*, they created their own way to sacralize Bouazizi. In short, they created their own 'religion' that makes Bouazizi fit with the title of martyr. This can be seen as a kind of civil religion.

Besides the tendency to see Bouazizi's self-immolation as a sign of a rift between religious and secular people, popular press also tended to expose the conflict between religious people and secular people during the revolution. One example is the rift between the Islamists and other groups during the demonstration. When the time of praying came, the Islamists wanted to perform prayer, but they found difficulties for ablution and protested the condition of mixed gender in the group. Responding to this situation, as reported by Tammam and Haenni, young people shouted, 'This revolution isn't yours' (Tammam and Haenni 2011, 6). Although the revolution looks like a secular revolution, surprisingly, it is the Islamist groups that finally won the elections held after the revolution.

It is true that the Islamists and jihadists were left behind during the revolution. It is true that some *ulamā* have condemned Bouazizi's self-immolation. However, there were many *ulamā* and Muslim activists who joined the revolution, including Yusuf al-Qaradawi, Amr Khaled, and Mohamed Rifai al-Tahtawi. Khaled came several times to the Tahrir Square to give his support to the revolution (Filiu 2011, 25–26; Tammam and Haenni 2011). Mohamed Rifai al-Tahtawi resigned from his position as vice spokesperson of Al-Azhar in order to support the revolution. Yusuf al-Qaradawi has been very influential during the waves of revolts in many Arab countries. In the context of the Muslim Brotherhood, as explained by Filiu (2011, 24), it 'plays a strategic part in Egyptian opposition, despite its initial reluctance to join the "Rage" mobilization'.

The *ulamā* that supported the dictators were mostly state-aligned *ulamā*. In fact, it was not only state *ulamā* that became the supporters of the corrupt regimes in the Middle East. There were intellectuals, military personnel, and many other elements of society. *Ulamā* were only one of them. Therefore, singling out the *ulamā* as the only supporters of the regime wouldnot explain the dynamics of the revolution. Furthermore, blaming state-aligned *ulamā* does not mean blaming religion in general. The fact that some *ulamā* endorsed dictatorship does not mean that the institution of religion or religion itself is always on the side of dictators. The fact that Sunni Islam does not recognize papacy gives further explanation. This religion does not recognize a single authoritative body or

person. Almost every fatwa can be contested. Therefore, the support of state *ulamā* to Ben Ali does not represent Islam or the Muslim community in Tunisia. Among the reasons why the Islamists could win the elections is because they have been in the opposite side of the government for a long time (Burhani 2014a, b, 199). As in the Tunisian case, when people were forbidden to vote for all elements of Ben Ali's regime in the election, then it was only the Islamists who were well prepared with the election (Schraeder and Redissi 2011, 17). The Islamist discourses around the struggle against authoritarian repression converged with popular ones before and during the Arab Spring. The reason for the popular support of the Islamists, however, was not coming from religious faith or cultural background of Tunisian people, but it was mainly because of political and economic circumstances in that country (Tessler 1997, 93).

Muslim Religious Media

Tunisian Revolution or the Arab Spring has often been called a Twitter or Facebook Revolution because of the important roles played by these two new media during the revolution. However, as stated by Khondker (2011), the role of conventional media cannot be neglected, particularly Al Jazeera that made the uprising reach the larger global community. Al Jazeera was the media that publicized the first protest following the self-immolation of Bouazizi and made it known worldwide (Schraeder and Redissi 2011, 11). Similar to the uprising in general, the public opinion regarding the status of Bouazizi, that is, suicide or martyrdom, seems to be significantly shaped by Qaradawi's comment aired by Al Jazeera. It is true that there are a number of observers who see the Tunisian Revolution as a secular revolution and describe *ulamās* position during the revolution as one at loggerheads with the revolt, that is, *ulamā* were supporters of the regime and against the revolution. Some observers even try to show the emergence of civil religion in the Arab world as seen by their acknowledgment of Bouazizi's martyrdom despite the fatwas from *ulamā* that he is not a martyr.

However, the study of Alec Jacobson that tries to show the image of Bouazizi as a martyr in media has been challenged or rejected by some Tunisian people in their daily communication. Jacobson (2011, 6) states, for instance, that hundreds of people who attended the funeral of Bouazizi showed more their rebellion to Ben Ali than memorialization of Bouazizi. The similar interpretation applies in the context of the uprising; he was

used merely as a symbol of opposition. When he asked them regarding his status as a martyr, most of them expressed their respect to Bouazizi and prayed to God to forgive him, but they did not call him a martyr. Jacobson also found that in three main Facebook groups set up after the revolution, that is, 'Fruit Vendor Topples Dictator', 'Mohamed Bouazizi Legend Never Dies. RIP', and 'Je ne vous oublierai jamais ya Mouhammed El Bouazizi', most of the people tend to follow Qaradawi by not calling Bouazizi a martyr, but also not condemning his act (Jacobson 2011, 28). Instead, they ask forgiveness from God for what Bouazizi did. The comments to Qaradawi's statement on Bouazizi uploaded to YouTube have a similar pattern. Most of them agree with Qaradawi although some of them insist to call him a martyr. All of these facts show the influence of Qaradawi's view on Bouazizi aired by Al Jazeera.

As discussed earlier, some *ulamā* had condemned Bouazizi's self-immolation outright. To justify their view, they quote verses from the Qur'an and prophetic traditions. They also distributed their views or fatwas through various media such as state television and newspapers. However, instead of being successful, they seem to have backfired. Media, in this context, did not help them to win the hearts and minds of people. It shows that although media can also become a player, sometimes, it simply becomes a medium to convey messages. There is something else that is also important in winning the hearts and minds of people, such as the content of the message.

The reason why people accept the view of Qaradawi in the case of Bouazizi seems not only to be because of his religious authority and the transmission of his view through Al Jazeera, but also his understanding of psychology or the feeling of people. Using Ehab Galal's analysis of Qaradawi's approach on religion, Qaradawi is typical of religious scholars who see a problem using realistic or contextual approach, not only literal understanding of canonical texts (Galal 2009, 164). In the context of Bouazizi, what is important is not only stating the law as written in the texts, but also the psychosocial condition of people. Qaradawi has avoided saying that Bouazizi is a martyr, but unlike other state-aligned *ulamā*, he did not condemn him for committing one of the gravest sins in Islam. He did not compromise Islamic law on suicide and martyrdom, but he also did not hurt the feelings of Bouazizi's family and those who have a plight like him. The way he dealt with the issue of Bouazizi seems in line with his general principle that, as stated by Khalil, 'all legal rulings should take into account the facts on the ground' (Khalil 2011, 136).

What can be inferred from here? Media is important, but the content of the message is not less important. Simply bombarding people with verses from the Qur'an and prophetic tradition would not be enough to convince people to do or not to do certain deed. There are many TV stations in the Arab world that only broadcast a lot of boring and uninteresting programs. The way Qaradawi approaches religion is similar to Al Jazeera's policy of broadcasting. Both of them, using Galal's statement, 'use rational, logical way of reasoning and in general highlight a balanced view of the world' (Galal 2009, 162).

The way Qaradawi approached Bouazizi's self-immolation reflects his *wasaṭiyya* (moderation) concept. Moderatism or *al-wasaṭiyya wa-l iʿtidāl* (balance and moderation) has been associated with Qaradawi's religious position and his method of *ijtihad*, that is, *manhāj al-wasaṭiyya*. Qaradawi explains the meaning of his concept of moderatism as follows: 'This method is based on middle positioning (*tawassuṭ*) and moderation (*iʿtidāl*), and distances itself from those who exaggerate and those who abbreviate, as well as from the rigorous and the indifferent' (Quoted in Gräf 2009, 218).[23] The meaning of moderation, even by Qaradawi himself, could be different things in different contexts. However, in the case of Bouazizi's self-immolation, it seems that it has a specific meaning, namely he does not want to follow those who hastily call him a martyr and those who inconsiderably condemn him of committing suicide. Condemning the act of Bouazizi would hurt many people who have no other means to fight against the dictatorship of Ben Ali. Qaradawi disassociated himself from these two opposing extremes.

Qaradawi's *wasaṭiyya* cultivates the attitude of opposing any kind of extremes (*al-taṭarruf al-dīnī*, *al-ghulūw fi'l-dīn*) and facilitates any effort to find middle-ness, balance, and justice. It is why, from the spirit of middle positioning, blaming Bouazizi of committing suicide would not be fair, but calling him a martyr of Islam would contradict with several teachings of Islam that prohibit self-immolation. In general, by applying *manhāj al-wasaṭiyya,* Qaradawi is able to cultivate, at least for himself, a habit to fight any excessiveness, whether it is in the context of power or in the context of opposition to the excessiveness itself.

Back to the issue of media, it is true that TV audiences can also be convinced by *ulama* and *daʿiyya* (preachers) like Amr Khaled, who has appeal in his communication skills, entertainment values, and clean-shaven and nattily dressed performance, but Khaled and preachers like him have different aspects of religion and do not issue any fatwa. Khaled promotes a

'Sufi' aspect of Islam or, using Galal's observation, 'the semantics of Islam, the intensity of the belief and the possibility of identification' (Galal 2009, 163).[24] Qaradawi and Khaled also represent two different levels of *ulamā*: highbrow and lowbrow. Qaradawi is typical of an erudite preacher that gains stardom and wins 'market Islam', a term from Haenni, through *Al Jazeera* (Haenni 2006). Khaled is typical of a new-style clean-shaven and nattily dressed preacher 'with high production and entertainment values' who oftentimes is able to attract more people than 'established authority figures with more erudite and, in some cases, more dour or even hellfire-and-damnation style of preaching' (Howell 2008, 43).

Conclusion

Bouazizi's self-immolation is a critical point from which to understand contemporary development of religion and religiosity in Arab countries. First, it provides a new religious dilemma for *ulamā* between a strict definition of martyrdom as commonly understood in classical books, i.e. those who die in a warfare jihad, or widen the scope of martyrdom to include the notion of biopolitics and bare life as a way to understand the self-immolation of Bouazizi. Yusuf Qaradawi seems to synthesize the classical norms and new circumstances. Instead of condemning Bouazizi's self-immolation as done by some state *ulamā*, Qaradawi gave sympathetic comment and asked people to pray for Bouazizi. However, he seems also to avoid calling Bouazizi a martyr in order to prevent copycat self-immolation that will devalue human life. Second, Bouazizi's self-immolation also draws the line between the secular and the Islamist in Tunisia, in particular, and the Arab world in general. At first, it shows the significant support of secularization and civil religion by hailing Bouazizi as a martyr and hero. However, the triumph of Islamist groups during the elections held after the revolution show that civil religion theory is not completely accurate. For Arab people, Islam is still perceived as a political alternative among many alternatives. When religion was combined with political opposition to dictatorship, as the case in Tunisia, people saw it answering their religious and political needs. Third, *ulamā* like Yusuf al-Qaradawi and Amr Khaled are the type of *ulamā* easily accepted by people both in conventional and in new media because of their ability to synthesize classical knowledge of Islam and contemporary developments, including the needs of modern people on religion. The way they preach and talk on

television is not through hellfire condemnation, but with more sympathy (or empathy) and understanding to the plight of people.

Notes

1. Farhad Khosrokhavar (2012) and John L. Esposito of Georgetown University also acknowledge that suicide is a new phenomenon in Arab countries (Westcott 2011).
2. Among figurative expressions on suicide in daily conversation, as reported by Dominique Avon (2012, 152–153), is as follow:

   A man walks into a local shop. The shopkeeper asks: 'Can I help you, sir?'
   The man replies: 'I would like a bottle of spirit of salt [*rūh al-mulḥ*], please'.
   The shopkeeper asks: 'To eat here or to take away?'

   Rūh al-mulḥ is a product to unblock drain, but occasionally misused to commit suicide by consuming it.
   Amari et al. (2011) express this new 'tradition' in the Arab world in an article with a striking title 'Immolation : Je brûle, donc je suis [Immolation: I burn, therefore I am]'.
3. In Roy's analysis about Jihadist, 'Martyrdom has more meaning than victory. There is no "obligation to produce a result" in jihad: it is an affair between the believer and God and not between the mujahid and his enemy … victory is not perceived to be the consequence of a series of human acts: it is a gift from God, which may or may not be granted' (Roy 1994, 66).
4. Ivan Strenski (2003, 14) says that extremist Muslims ratchet up sacrifice 'by either replacing Abraham with Muhammad as the model of sacrificial behavior or an extreme interpretation of Abraham's attempted sacrifice of Isaac [Ismael]'. The model thought by Abraham is *giving of* part of the property, moderate/prudent sacrifice, while the model thought by Muhammad is *giving up* all belonging including self, extreme sacrifice. Talal Asad (2007) criticizes this view by showing that the concept of *baina husnayayn* is the dominant concept in Islam.
5. David Cook (2007, 16–19) mentions that virtually only a few verses in the Qur'an talks explicitly and unambiguously about mar-

tyrdom. He concludes that if martyrdom has special place in Islamic doctrine, the Qur'an should mention many times.

6. Sahih Bukhari Volume 2, Book 23, Number 445. Available at: http://www.sahih-bukhari.com/Pages/results.php5 (accessed March 18, 2013).
7. Sahih Bukhari Volume 2, Book 23, Number 446. Available at: http://www.sahih-bukhari.com/Pages/results.php5 (accessed 3/18/2013).
8. For Martin Heidegger, for instance, suicide is the 'ultimate affirmation of Dasein' (Fynsk 1986, 127) or in Heidegger's own words, 'Authentic Being-towards-death signifies an existentiell possibility of Dasein' (Heidegger 1962, 304).
9. After 18 days being hospitalized because of his severe injuries, he eventually died on January 4, 2011.
10. Available at: http://www.alittihad.ae/details.php?id=2622&y=2011 and http://www.youm7.com/News.asp?NewsID=333733 (accessed March 19, 2013).
11. See: http://www.egyptindependent.com/news/salafi-leader-whoever-commits-suicide-tunisian-style-apostate (accessed March 19, 2013).
12. See: http://www.google.com (accessed March 19, 2013).
13. http://arabia2day.com/local/saudi-mufti-brands-suicide-protests-as-great-sin/ and http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=296713 (accessed March 19, 2013).
14. http://www.almoslim.net/node/140211 (accessed March 19, 2013).
15. The video of his comment is available at http://www.youtube.com/watch?v=NJQn5nprx_Y and was at http://www.youtube.com/watch?v=iW0UcFC8FDM. The former link has been watched by 83,434 people, while the latter has been watched by 8966 people since January 15, 2011. The dialogue with Qaradawi on whether Bouazizi has committed suicide or martyrdom is available at http://www.youtube.com/watch?v=3n18TT7J8Sc. This video has been watched by 99,592 people since January 17, 2011 (accessed March 19, 2013).
16. http://alwatan.kuwait.tt/articledetails.aspx?id=83558 (accessed March 20, 2013).
17. According to Dominique Avon's interview with three Shiite religious authorities (Khomeini, Sistani, and Fadlallah), the first school

has positive response to suicide. It says: '[K]illing oneself for an important end or a major interest is not suicide, it is *jihad*' (Avon 2012, 157).

18. Hamza Yusuf's view is expressed in his article entitled 'Deferred Dreams, Self-Destruction, and Suicide Bombings'. Available at: http://allahcentric.wordpress.com/2011/01/31/shaykh-hamza-yusuf-on-the-revolution-in-tunisia/ (accessed March 20, 2013).
19. See: http://www.youtube.com/watch?v=NJQn5nprx_Y and http://www.youtube.com/watch?v=3n18TT7J8Sc.
20. Excerpts from an interview with Yusuf Al-Qaradhawi aired on Al-Hayat 2 TV on December 17, 2010. Available from: http://www.memritv.org/clip_transcript/en/2731.htm. Similar statement can be found at: http://globalmbreport.com/?p=579&print=1 (accessed March 25, 2013). Some scholars, such as Ehab Galal, consider MEMRI as a 'pro-Israeli Media Research Institute' (Galal 2009, 162).
21. Qaradawi has been consistent in support to Palestinians. His justification comes from the Qur'an 2.246, 'And what reason have we that we should not fight in Allah's way and we have indeed be deprived of our homes and our children?'
22. Devotus in Giogio Agamben's *Homo sacer* (1998, 96–97).
23. A comparative study on this concept can be read in Burhani (2012, 564).
24. The appeal of Amr Khaled has become a subject of numerous studies. Among them are the works of Aaron Rock (2010) and Lindsay Wise (2003, 2006). This chapter, therefore, does not deal with that.

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CHAPTER 4

Sharia Law and Muslim Ethical Imaginaries in Modern Indonesia

Robert W. Hefner

Any discussion of sharia in today's world must begin by putting aside the idea that sharia is a fixed and finished body of law-like prescriptions (Arabic: *aḥkam*) derived from scriptural texts in a timeless and unitary manner. The latter view was once common among Orientalist scholars of the law, and in recent years, it has found a second life among conservative Islamists and even some mainstream Muslim scholars. Rather than viewing human understandings of sharia as singular, unchanging, and easily achieved, we come closer to the law's living, cultural reality when we recognize that the understanding of sharia is always sociologically and epistemologically *contingent*. Its contingency lies in the fact that its understanding is mediated through a complex and variable array of religious authorities, popular ethical imaginaries, and media of preservation and transmission.

We can say more about sharia as a social and epistemic reality. Borrowing a phrase from Fredrik Barth's (1993, 177–236) anthropology of knowledge, we can observe that under certain circumstances, the interplay of the above elements (authorities, imaginaries, media of learning, and social reproduction) may create what Barth (speaking of traditions of knowledge in general) refers to as "criteria of validity," with regard to what the sharia is and the moral practices it enjoins, thereby facilitating a relatively stable

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understanding over time and space. At other times, however, the specific "corpus of assertions" inspired by this contextual interplay may be marked by contradictory understanding and ethical projects.

Indeed, the two outcomes I have described here may coexist in the same society. As Wael Hallaq has argued, in the middle centuries of the Muslim era, scholarly understanding of the law could build on a strong "epistemic consensus" as to, among other things, the "hierarchy of the legal sources" (Hallaq 2001, 127) to be consulted for understanding the sharia, as well as the proper methodologies scholars were to use for their interpretation. On basic matters of worship (*ʿibādāh*), in particular, Muslim scholars in these and later periods achieved a striking measure of agreement on what God's law enjoins. On matters related to human affairs (*muʿāmalāt*), however, not least with regard to such highly charged issues as gender relations and state organization, the consensus among scholars could be, and often was, less comprehensive (cf. Dupret 2012, 79; Ali 2006, 2010; Mir-Hosseini 2003; Moosa 2001). Needless to say, the plurality of sharia meanings could become even more complex as engagement with the law moved from scholarly to popular social circles.

Many of the classical commentaries on the sharia today regarded as authoritative were first written in between the eleventh and sixteenth centuries by members of the scholarly class known as the *ulama*; the bulk of such writings came to be preserved, studied, and transmitted in *madrasa* boarding schools by way of the discipline of jurisprudential reasoning known as *fiqh*. However, as a "total discourse" in which "all kinds of institutions find simultaneous expression: religious, legal, moral and economic" (Messick 1993, 3), sharia was never the unique preserve of well-mannered scholars. In most Muslim societies, preachers, politicians, and a host of popular religious leaders also referred to what they regarded as sharia in their public comments. Sharia references also figured in the discourse of less public religious actors, such as those associated with the array of esoteric spiritual exercises known generically as Sufism. Inevitably, nonscholars or "ordinary Muslims" (Peletz 1997) had their own understanding of just what sharia entails. More to the point, because they developed their knowledge of Islam and God's commands through a diverse array of circumstances, ordinary Muslims brought epistemologies and ethical projects quite different from those of the scholarly class to their efforts to understand sharia. As this engagement moved from scholarly to popular circles, then, it could be, and typically was,

subject to different criteria of validity, and different interpretations and instrumentalizations.

The two social potentials to which the above discussion points—for scholarly understandings of sharia to pluralize and become opposed and for popular actors to engage sharia traditions in a manner quite different from *fiqh* scholars—have become all the more pronounced in recent decades. In the aftermath of the great Islamic "awakenings" (Ar. *saḥwa*, Ind., *kebangkitan)* of the 1970s and 1980s, and in a manner that bears some resemblance to the "democratization" of faith seen in modern American Christianity (Hatch 1989), growing numbers of ordinary, non-elite Muslims have aspired to take fuller responsibility for the study and observance of their faith. For some believers, one consequence of this epistemic shift has been the realization that Islam is a religion of divine law and the conviction that the proper profession of Islam requires that one brings more of personal life and society into conformity with sharia norms. Rather than sharia-mindedness creating a stronger consensus on the latter's rules and meanings, the aspiration to sharia compliance has only unleashed its own debates over what those norms *are*, *who* has the authority to define them, and through what social and epistemic instruments they are to be realized.

At the most general level, today's sharia debates have come to focus on several core questions: Are sharia regulations simple, positive law-like, and finished in their form? Or, as Tariq Ramadan (2009), Muhammad Hashim Kamali (2008), and Muhammad Khaled Masud (2005) argue, referencing Abū Isḥāq al-Shāṭibī's (d. 1388) scholarship (see also Ali 2006 and Mir-Hosseini 2003, 2006), does a proper derivation of sharia norms require a prior determination of the "spirit of God's law" or the law's "higher aims" (*maqāṣid al-sharīʿa*; see also Auda 2008)? Today these questions have only become more rather than less pervasive. The contestation shows no signs of ending any time soon.

Against this historical backdrop, I want, in this chapter, to talk about trends in sharia imaginaries in modern Indonesia, beginning in the early twentieth century but ultimately focusing on developments in post-Suharto (i.e. post May 1998) Indonesia, when the country underwent a far-reaching transition from authoritarianism to electoral democracy. Among the most distinguished foreign observers of Indonesian Islam, the Dutch anthropologist, Martin van Bruinessen (2013a, b), has spoken of a "conservative turn" in Indonesian Islam during the latter period, and pointed to growing appeals to sharia ideals as an example of the trend.

I do not disagree with Martin, whose work is a model of scholarly thoroughness. But I do wish to suggest that to understand trends in sharia ethics in Indonesia and elsewhere, it is helpful, at times, to put aside the overused sobriquet of "liberal" versus "conservative" and to focus instead on the contextual circumstances out of which different sharia imaginaries emerge.

My remarks in this chapter will suggest that popular sharia imaginaries in Indonesia have always been varied, but their central current in modern times has shown the distinctive imprint of two organizational and epistemic contingencies. These are the history and content of Muslim education in this Southeast Asian country, and, in the twentieth century, the extraordinary growth and pervasiveness of Islamic social welfare associations. Together, I will suggest, these two rather ordinary-looking circumstances have had a rather extraordinary influence on the expectations mainstream Indonesian Muslims bring to the task of understanding God's commands. A key feature of this epistemic disposition is that many Muslims identify sharia and the divine good with modern social and educational improvements, rather than the fixed and finished legal "rules" (Ar. *aḥkam*) emphasized by some proponents of the law. Although not all make the discursive link, some among the proponents of the former view link this understanding to the Islamic ethico-legal concept of "public interest" (Ar., *maṣlaḥah*; Ind., *kemaslahatan*; see below).

Having examined the historical and epistemic circumstances that created this distinctive sharia imaginary in the early twentieth century, I will, in the last portion of this chapter, jump forward several decades (doing so because of the constraints of space) so as to explore some of the challenges that imaginary has faced in the aftermath of the fall of the Suharto regime (1966–1998) and the transition to electoral democracy. In Indonesia, as in so many of the upheavals unfolding in the Muslim world today, the more open political environment has led to growing calls to bring social and personal life into conformity with sharia law. Although developments within Indonesian Muslim society show many of the features of the "conservative turn" discussed by van Bruinessen, current developments—and popular understandings of sharia—reveal the continuing influence of Indonesian ethical and epistemic legacies. However, they do so in circumstances also marked by the politicized mobilizations so common in our late-modern age. As a result, the future of this contest of sharia meanings remains anything but certain.

Islamic Education and the Indonesian Sharia Heritage

To explain the origins and to assess the continuing influence of Indonesia's distinctive sharia ethos, it is necessary to stand back and reflect on the history and social organization of Islamic education in the Indonesian archipelago. The key feature that distinguishes Islamic education in this part of the world from that in the core areas of the Muslim Middle East has to do with the relatively late-arrival in the Indonesian archipelago—in the nineteenth and twentieth centuries—of an institutional equivalent of the classical Middle Eastern *madrasa*. In its prototypical Middle Eastern form, the *madrasa* was a college for intermediate and advanced instruction in the Islamic sciences in general, and of *madhhab*-based Islamic jurisprudence (*fiqh*) in particular (Berkey 1992; Makdisi 1981; Hefner 2009). In the Middle East, the first *madrasa* appeared in the tenth century, three centuries after the age of the Prophet. By the twelfth century, the *madrasa* had become "perhaps the most characteristic religious institution of the medieval Near Eastern urban landscape" (Berkey 2003, 187). From the perspective of Islamic law and ethics, the rise of the *madrasa* in Middle Eastern Islam was important because it facilitated a relative "recentering and homogenization" of Islamic knowledge and authority (Berkey 2003, 189; see also Chamberlain 1994; Grandin and Gaborieau 1997). The *fiqh*-focused *madrasa* canon came to occupy a privileged place in elite educated understandings of Islam. Scholars of the law, the *fuqaha*, became preeminent among Islamic notables. And, at least in educated circles, *fiqh* came to be regarded as the queen of the Islamic sciences, and the key to a proper sharia normativity.

As Anthony Milner (1995, 146, 217) and Jajat Burhanudin (2006) have both demonstrated, during its first centuries, Islamic normativity in Southeast Asia had a "raja-centric" rather than a *madrasa*-based and legal-minded cast. The pomp and ceremony of imperial Islam provided a religious exemplar that informed the practice of Islam well into the late nineteenth and early twentieth century (cf. Woodward 1989, 164; see also Laderman 1991, 16; Pelras 1996). Transregional networks of a relatively "orthodox" Islamic learning *were* operative during this period. For example, as Azyumardi Azra and Ronit Ricci have shown, from the seventeenth century onward, an Arabic-language "cosmopolis" served to distribute works of theology, grammar, Prophetic biography, and moral edification across the Indian Ocean to the Indonesian archipelago (Azra 1992; Ricci

2011, 262–267). However, these works looked to Muslim rulers, prophets, and saints for ethical exemplarity more than they did the details of Islamic jurisprudence.

In fact, early-modern Southeast Asia had little of the educational infrastructure associated with the Middle Eastern *madrasa*; as a result, prior to the twentieth century, *fiqh* had a limited place in local ethical registers. Certainly, Muslim Southeast Asia had its share of Islamic study circles and boarding residences where young men (and, more rarely, young women) came together to discuss Islamic matters. However, these institutions devoted their pedagogical energies to Qur'an memorization, Prophetic biographies, Islamic spirituality (*taṣawwuf*), and moral edification of a largely nonjurisprudential sort. The historical record does indicate that a few Muslim scholars owned small digests that summarized a few features of Shāfi'i law, the Sunni school of law long dominant across Southeast Asia (Hooker 1984, 2013). But until the rise of Islamic reform in the late nineteenth century, the careful study or robust enforcement of those legal traditions was virtually unknown. As a result, popular Islamic ethical imaginaries had less to do with scholarly *fiqh* than they did with lessons from the life of the Prophet and a Sufi-informed concern with moving closer to God under the guidance of a living saint.

It is important *not* to see this legacy as an example of some sort of Indonesian exceptionalism with regard to things Islamic. The Turkish historian of Islam, Ahmet Karamustafa (2007), among others, has shown that there was a similar, nonlegalistic disposition to Muslim ethical culture across broad swaths of Central Asia. As Merle Ricklefs has demonstrated, what made Indonesia and especially Java's nonlegalistic disposition more distinctive is that it led to a "mystic synthesis" that combined a commitment to observation of the five pillars of Islam, with "acceptance of the reality of local Javanese spiritual forces such as … the Goddess of the Southern Ocean … and a host of lesser supernatural beings" (Ricklefs 2012, 7). The relatively weak influence of formal *fiqh*-based commentaries and education on Indonesian Islamic imaginaries also helps to explain how it was that in matters of family relations and gender practice, Indonesian customs long differed from classical *fiqh* ideals (Robinson 2009; Schröter 2013).

Inevitably, however, as the modern era advanced, this Indonesian ethical imaginary experienced challenges and underwent changes. In the late nineteenth century, a growing interaction with centers of pilgrimage and learning in the Middle East (see Laffan 2003; Snouck Hurgonje

1931; Vredenbregt 1962) brought about a heightened engagement with *madrasas* and *fiqh*-based normativity. From the middle decades of the nineteenth century onward, the Indonesian and Malaysian equivalent of the Middle Eastern *madrasa*, known locally as a *pondok* or *pesantren* (see Dhofier 1999; Azra et al. 2007), became a prominent feature on the social landscape and a major influence on Muslim ethical debate (see also van Bruinessen 1995; Ricklefs 2007, 52–72). Just as with classical *madrasas* in the Muslim Middle East, the study of Qur'an, the Sunna of the Prophet, and *fiqh* jurisprudence lay at the heart of the *pesantren* curriculum.

In the final years of the nineteenth century, the rapid establishment of *pesantren* across central and western portions of the archipelago insured that a well-organized if at first minority wing of the Muslim community developed a lettered familiarity with and commitment to *fiqh* and the new understanding of Islamic sharia it allowed (Hefner 2009; Hooker 2013). In the first decades of the twentieth century, this development converged with social change and anticolonial ferment to spur the rise of organized movements for the implementation of sharia. Historical studies indicate that, among the Indonesian Muslim population as a whole, there was little agreement on just what the sharia entailed and even less on what it might mean for state organization. The growing influence of *fiqh*-derived normativity in *pesantren*-linked circles *did* lead, however, to appeals for a "sharia-compliant" refiguration of gender mixing and rules with regard to women's dress, divorce, and inheritance (see Bowen 2003; Kartodirdjo 1972; Peletz 2009).

This was just the beginning of more than a century of public-ethical contention in Indonesia, in which questions of gender and nation have figured prominently. Although during the middle decades of the twentieth century, Indonesia developed a sizable nationalist movement of a broadly "secularist" nature, some of the most enduring ethical contentions had to do with, not contests between Muslims and non- or nominally Muslim secularists, but opposing *Muslim* understandings of Islamic ethics. It is these on which I focus in the remainder of this chapter. In particular, no sooner had the new, *fiqh*-informed normativity become a point of orientation for some *pesantren*-based Muslims than for other observant Muslims, the hope for a more authentic profession of the faith and conformity with sharia imbricated with aspirational projects less exclusively grounded on classical *fiqh*. The modern Indonesian sharia imaginary was, it seemed, once again in the throes of ethical and hermeneutic pluralization.

Islamic Modernism and Maṣlaḥah-ization

Not long after the network of *pesantren* boarding schools had been put in place and the conditions created for what one might have expected to be a classical-*fiqh* hegemony, the movement of Islamic reform known in Indonesia as Islamic "modernism" (Ind., *kaum modernis*; see Abdullah 1971; Noer 1973; Roff 1994) arose in urban areas across the region. Faced with the challenge of European colonialism, modernists in groups like the Muhammadiyah (established in Yogyakarta, Java, in 1912; see Alfian 1989; Nakamura 2012, 51–77; Peacock 1978) concluded that the most effective educational instrument for the improvement of the Muslim community was, not the *pesantren* with its *fiqh*-centered curriculum, but the "Islamic day school" (Ind., *sekolah Islam*). With its classrooms, blackboards, and mix of general and religious instruction, the latter institution was modeled on Protestant and, especially, Catholic schools, which had been introduced by European missionaries in the early years of the twentieth century (see Kruithof 2014, 95).

One cannot emphasize too strongly that modernist education was not just a matter of blackboards, class levels, girls' education, and a curriculum that included science, mathematics, and history. Modernist education involved all these things, but it was also a project for a new approach to Islamic law and ethics, one premised on heightening Islam's transformative impact on the individual and society by linking Islamic values to modern learning, social welfare organizations, and thoroughly "modern" understandings of citizenship and social well-being.

The modernists, of course, did not repudiate sharia; however varied its meanings, it is difficult to imagine *any* Islamic ethics without a foundational grounding in some understanding of God's commands. However, although Indonesia's modernists invariably affirmed the importance of Islamic sharia, they differed from their *pesantren*-based counterparts by insisting that a proper understanding of sharia required believers to put aside medieval *fiqh* and return to the Qur'an and Sunna. The Muhammadiyah's founder, Ahmad Dahlan (1868–1923; see Munir Mulkhan 2010), had studied in Mecca and there developed an interest in reformist ideas, including those of the well-known Egyptian modernist, Muhammad Abduh (1849–1905). Like Abduh, Dahlan and his followers stressed the importance of *ijtihād* (lit. "striving" or "self-exertion"; or, in Islamic jurisprudence: the effort by qualified religious scholars to infer the rules of Islamic law) over pious conformity (*taqlīd*) to classical schools

of jurisprudence. The Muhammadiyah leadership also insisted that, in modern times, the most effective way to perform *ijtihād* was collectively (*ijtihād jamaʿi*), so as to ensure judgments drew on a balanced array of scholarly and practical experts (Djamil 1995, 59).

Muhammadiyah scholars never developed a fully systematic, *fiqh*-based theory to explain their legal methodologies (Hosen 2003). But they did try to explain the ethical grounds for their activities by invoking the long-recognized legal concept of *maṣlaḥah* or "public interest." They also insisted that *maṣlaḥah* interests were themselves derivative of the "higher aims of the sharia" (*maqāṣid al-sharīʿa*; see Djamil 1995, 60). Developed centuries earlier in the Mālikī and Ḥanbalī schools of law, in the late nineteenth and twentieth centuries the concept of *maṣlaḥah* was cited by Islamic reformists in many parts of the globe to justify public and private initiatives not addressed in classical *fiqh*, but regarded as of urgent ethical importance (see Opwis 2007; Hallaq 2011; see also Feener 2007, 137).

In the case of the Muhammadiyah, *maṣlaḥah* principles were used to justify an even broader array of activities than was typical for Muslim modernists in other lands. No development illustrated this emphasis more clearly than that most remarkable of modern Indonesian achievements: the establishment and spread of Islamic welfare associations. Viewed from a comparative Islamic perspective, Indonesia has the most "associationalized" variety of Islam in the world. Today the reformist Muhammadiyah has some 25 million members. It manages 12,000 schools, 167 institutions of higher learning, 421 orphanages, 345 polyclinics and hospitals, and a nation-wide bank (Bank Pengkreditan Rakyat). Here in practice is demonstrable evidence of a distinctive and *maṣlaḥah*-ized understanding of Islamic ethics (Njoto-Feillard 2012).

The Muhammadiyah example also illustrates just how Muslim understandings of sharia and *fiqh* can change over time, at times in ways at variance with the classical tradition. Although they had not yet devised an explicit, tradition-based rationale like that Tariq Ramadan or Ibrahim Moosa would develop in the 2000s (Ramadan 2009; Moosa 2001), what the Muhammadiyah and other Indonesian modernists were attempting from the 1920s onward was similar to what these contemporary intellectuals have discussed in their calls for a deep reform of modern Muslim ethics (see also Johnston 2007). Both efforts attempt to build a reformed Muslim ethics around two epistemic pillars: a *maqāṣid*-based understanding of the sharia, emphasizing the higher aims of the law rather than

unchanging ethical rules, and a determination to acquire and deepen our understanding of the natural and social world, so as to insure that believers' efforts to realize the Islamic good move forward on the basis of empirical observation and practice. In the case of the Muhammadiyah, much of this new Islamic aspirational project was put in place *avant la lettre*, which is to say, ahead of the detailed normative work that some scholars of Islamic law and ethics might have regarded as necessary to justify the reform in explicit legal terms.

Why did Muhammadiyah intellectuals and activists not take the additional step and provide such publicly reasoned rationales for their *maṣlaḥah* -based behaviors? In one sense they did, or they thought they did, inasmuch as, as noted above, they justified their activities with reference to *maṣlaḥah* and the higher aims of the sharia (*maqāṣid al-sharī'a*). But there were additional, sociological reasons for Muhammadiyah's hesitation. At this point in history, the movement's membership was recruited primarily from ranks of the urban commercial class, rather than from the rural network of *fiqh* scholars associated with Indonesia's *pesantrens* (Nakamura 2012; Peacock 1978). Muhammadiyah had a chronic shortage of trained scholars of the law. Buoyed by the modernist conviction that it was sufficient to ground one's activities on the Qur'an and Sunna, and living in a society where *fiqh* rulings did yet not saturate public discussions (because of the late development of a *pesantren* network), Muhammadiyah leaders appear also to have felt that detailed jurisprudential rationales were not a priority. However, the formulation of such rationales was also impeded by the fact that, although its leadership was brightly modernist, the rank and file of the Muhammadiyah has always included members with decidedly unreformed understandings of Islamic law (see below).

Tellingly, it was only in 1929 that the Muhammadiyah established a fatwa council, the Majlis Tarjih (MT), for the issuance of rulings on matters of ethical and religious importance (Anwar 2005). Rather surprisingly in light of Muhammadiyah's boldness in other spheres (see Njoto-Feillard 2012), from 1929 to 1953, the MT issued fatwas on ritual matters alone, steering clear of social, political, and educational matters (Hosen 2003, 84). In the 1950s, the MT issued rulings on the sources of Islam and a few social affairs, but it began to address social matters like bank interest, interreligious marriage, and in-vitro fertilization only after 1968. Although in the late 1990s, the organization attempted to jump-start a broad array of intellectual innovations with the appointment of young Muhammadiyah

intellectuals—including a well-regarded Muslim feminist—the initiative stalled, for reasons that will become clearer below (see also Burhani 2012).

As the history of all Muslim lands makes clear, popular Islamic understandings of sharia are not unchanging but contingent in a manner that shows their responsiveness to broader projects and ethical currents in society. New forms of learning and other social changes can create pressures for new understandings and practices of Islamic ethics and legal traditions. Over the course of the twentieth century, social pressures like these grew steadily in Indonesia. However, the two developments highlighted here—the reluctance of reformists to follow through on these changes by promoting a discursivized reinterpretation of Islamic legal traditions, and, second, the reformist inability to scale up these discourses into the commanding heights of state and society—were to complicate later efforts to bring about a sustainable shift in Indonesian understandings of sharia.

Reform Politics and New Sharia Contention

Indonesian history shows, of course, that this "public welfare"- and "higher aims"-based approach to Islamic sharia was not the only understanding of Islamic normativity in late- and postcolonial times. Indeed, the question of the meaning and place of sharia in Indonesian society has been a point of bitter cultural contention for more than a century. A peasant rebellion in West Java in the 1880s already featured calls for the implementation of sharia (Kartodirdjo 1972). In the months leading up to the declaration of Indonesian independence in 1945, the Islamic wing of the independence movement called for the state to enforce sharia law among all Muslim citizens, a proposal that was eventually rebuffed. In 1948, fierce conflict emerged within the ranks of Indonesian republican fighters (battling Dutch colonial forces at that time). The conflict eventually degenerated into the 15-year-long "Daarul Islam" rebellion, the proponents of which called for the establishment of an Islamic state (Formichi 2012; van Dijk 1981). Between 1957 and 1959, the Constituent Assembly, which had been convened to write a new national constitution, broke down over bitter disputes as to whether the state should enforce sharia (Feith 1963). The question of state-enforced sharia emerged yet again during the special session of the Provisional People's Consultative Assembly at the beginning of Suharto's "New Order" regime, from 1966 to 1968. Finally, and most relevant for the present discussion, sharia debates also raged in the early years of the post-Suharto transition, when supporters of state-enforced

sharia attempted to introduce constitutional amendments that would have required the state to enforce an unreformed version of sharia law (cf. Bowen 2013; Elson 2013; Salim 2008, 85). The latter efforts failed, not least because the country's two largest Islamic social welfare organizations, the Muhammadiyah (25 million members) and the Nahdlatul Ulama (30–35 million), opposed the amendments.

Some observers of modern Indonesian politics have seen these latter setbacks as proof that "secular" or "secular nationalist" varieties of public ethics and political normativity have long reigned supreme in Indonesia. Such a generalization ignores what is most distinctive about the Indonesian Muslim sharia imaginary; but it had a measure of truth during the 1950s and early 1960s. In those years, the single largest of Indonesia's political parties was the Communist Party, and it achieved the unusual distinction of becoming the largest Communist Party in the entire noncommunist world (Mortimer 1974). Political rivalries between the parties of a general secularist orientation, including the Communist and Nationalist parties, and those of a broadly Islamic nature, led some Muslims of secular or nonconformist persuasion to distance themselves from Islamic ideals generally. The polarization continued in the aftermath of the New Order's rise to power in 1965–1966, following a failed left-wing officers' coup in Jakarta on the night of September 30, 1965 (Roosa 2006). The mass killings of alleged communists that followed, in a campaign spearheaded by the armed forces and supported by the largest Muslim social welfare organizations, led almost two million nominal Muslims to convert to Christianity or (in far lesser numbers) Indonesian Hinduism (Cribb 1990). Through the early 1970s, it seemed as if the process of Islamization that had made steady progress from the late nineteenth century to the middle decades of the twentieth was slowing or even being reversed (Ricklefs 2007).

Beginning in the late 1970s, however, Indonesia began to feel the effects of a far-reaching Islamic awakening (Ind., *kebangkitan*). By the early 1980s, the effects of the revitalization were apparent even in once-nominally Islamic segments of the population (Ricklefs 2012). For most of the New Order era (1966–May 1998), state controls over overtly Islamist forms of political mobilization remained tight, and the most conspicuous indices of the revival were seen in personal piety, public religious study, and Islamic sociability. Indonesian politicians, and not a few Indonesianists in the West, often distinguished between a "cultural" and a "political" wing of the revival, typically arguing that the former was the more significant of the two. However, because of the authoritarian controls of the New

Order regime, no one could say what trends might become dominant were the regime to fall. Not without reason, many Western Indonesianists worried that once the New Order controls disappeared, the public face of Indonesian Islam might quickly become notably less democratic.

The early years of the post-Suharto, "Reformasi" ("reformation") era, as it is called, *were* ethically and politically complicated, to say the least. In the first years of the Reformasi era, several far-reaching legislative reforms were introduced that moved the country decisively away from the centralized authoritarianism of the New Order. The lifting of state controls on the media, labor organizations, and civil society organizations quickly led to a proliferation of newspapers and journals, new labor activism, and vibrantly unrestrained social media. Between 1999 and 2002, a series of constitutional amendments were put in place that removed the legal edifice of the authoritarian New Order by reducing executive power, strengthening human rights protections, expanding regional autonomy, mandating direct presidential elections, and institutionalizing judicial review in a new Constitutional Court (Butt and Lindsey 2012, 19–25). Together, these developments had the effect of "producing a degree of openness, public debate, and widening horizons that appears to have transformed the country" (Cammack et al. 2015, 13). One additional feature of this transformation was the rise of women's activism, as illustrated in what was arguably one of the strongest currents of Muslim feminism in the world (Robinson 2009; Schröter 2013).

Not all of the legislative reforms reinforced civil–democratic trends. In the aftermath of a presidential decree and national legislation in 1999–2000, Indonesia initiated what was to become one of the most far-reaching devolution of state powers seen anywhere in the world in the modern period (Aspinall and Fealy 2003). Funding and decision-making authority for a broad array of state services were transferred back to the provinces and districts. Although according to its Western-advised Indonesian architects, the decentralization program was supposed to move government "closer to the people," it had the unintended effect of unleashing a ferocious scramble among rival political factions in the provinces to win control of the state apparatus and the resources to which it provided access (Van Klinken 2007). Where, as in six of Indonesia's 30-plus provinces, this regional factionalism overlapped with basic ethnic or religious divides—especially the division between Christians and Muslims, in those few provinces where the two groups coexisted in roughly equal numbers—the resulting mobilization often escalated into

ethno-religious conflicts. Between 1999 and 2003, more than one million people were displaced in some six core conflict zones, and more than 10,000 people died. By 2003–2004, the worst of the regional violence was over; in several (but not by any means all) conflict zones, local populations devised social instruments to bring about a measure of reconciliation. But the conflict heightened tensions between Muslims and Christians, and seemed to imperil some of the greatest achievements of Indonesia's Muslim democrats.

These same developments raised questions about what remains of Indonesia's distinctive precedents for a *maṣlaḥah*- and *maqāṣid*-based approach to sharia and Islamic ethics. To begin to answer this question requires that we take quick note of five developments.

The first and most striking development had to do with changes that had begun in the early 1990s but reached fuller expression in the 2000s. The changes center on the fact that, although their organizational penetration in Indonesian society remains strong, neither Nahdlatul Ulama (NU) nor the Muhammadiyah are today as dominant in public affairs as they were 30 years ago. Organizationally speaking, and as measured using such variables as membership, NU and Muhammadiyah remain without peer. They are still the largest Muslim social welfare organizations in the world. However, post Suharto, Indonesia has witnessed the emergence of a wide array of new Muslim currents, movements, and organizations, and these have created a vastly more competitive organizational *and* normative field than years earlier. Some of these new groups have exercised an influence on Muslim ethical imaginaries far greater than their numbers in society might imply.

This first development has in turn resulted in a second and equally important trend. As Din Wahid (2013), Farish Noor (2012), and Noorhaidi Hasan (2006), among others, have observed, many among the newer normative currents operating today in Indonesia have roots in transnational Islamic movements. The most important of these is the Muslim Brotherhood–inspired Prosperous Welfare Party (PKS), which grew out of what is called the *tarbiyah* ("ethical education"; see Machmudi 2006) movement of the 1990s, most of whose leaders had spent time as students in Cairo or Arabia (see also Bubalo et al. 2008; Fahmi 2006). Less numerically significant but influential still is the Indonesian wing of the Hizb ut-Tahrir, an internationalist organization founded in the 1950s and dedicated to the reestablishment of a global caliphate and state-supported Islamic law. Smaller yet but ideologically influential, several variet-

ies of Saudi-inspired Salafism have also appeared on the national scene. Most but not all of the latter reject democracy and call for their members to steer clear of all forms of party politics (Wahid 2013). However, not all factions have abided by this counsel; indeed, a militant, armed wing of the Salafi community was among the most active groupings battling Christians in Maluku during the conflict in that region from 1999 to 2003 (Hasan 2006).

In light of the wide variety of new Islamic movements, generalizations on matters as complex as ethics and sharia law are difficult. But one thing that unites many of the new movements is that their internationalist allegiances make them *less* inclined to ground their normative imaginaries on the legacies of Indonesian Muslim educational or associational life. Indeed, some in these groupings deny that Indonesia has any legitimately Islamic normative legacies at all—as if Indonesia's heritage of schooling, social welfare organization, and *maṣlaḥah* ethics was not itself an authentically Islamic ethical response to the challenges of the age. As these new groups attempt to capture the high ground from once-dominant Indonesian Muslim associations, some stigmatize the NU and Muhammadiyah's accomplishments as not in keeping with sharia and "true Islam."

A third point follows from these first two, and has to do with the way in which the heightened contest over Islam and public ethics in post-Suharto Indonesia affected the *internal* dynamics of the country's mass-based social organizations, especially the Muhammadiyah and NU. During the tumultuous years of the 1990s, the leadership of both organizations had been dominated by activist intellectuals committed to constitutional democracy, and civic pluralism (Hefner 2000). The women's wings of both organizations—and especially Muhammadiyah's Aisyiyah (van Doorn-Harder 2006; Syamsiyatun 2008)—had also developed a powerful Muslim-feminist wing, the intellectual leadership of which emerged from the country's influential state-Islamic University system (UIN/IAIN; see Jabali and Jamhari 2002). In the early 2000s, however, the moderate and liberal leaders that had steered these two organizations through Indonesia's transition to democracy were voted out of power. Although the new leadership in both organizations was neither radical nor uniformly conservative—both, for example, continued to voice their support for constitutional democracy—both downgraded any organizational emphasis on pluralism, women's rights, and other causes seen as "liberal." Indeed, in the Muhammadiyah's national congress in 2005, lib-

erals and, especially, Muslim feminists (one of whom had been given a seat on the organization's powerful Majlis Tarjih) were greeted with catcalls (Burhani 2012; Dewi 2008). Antiliberal sentiments in both organizations have diminished significantly in more recent years, and, since 2014, both organizations have committed themselves to national and international programs that seek to promote Indonesia as a global model for Muslim civility and tolerance.

A fourth and, by most measures, more strikingly conservative development has been the rise of the National Council of Indonesian Ulama (*Majlis Ulama Indonesia*, MUI). The MUI is an organization that, since 1999, has dedicated itself to the task of imposing a new and conservative orthodoxy on Indonesia's long-pluralized Islamic field (Hasyim 2011; Olle 2009). Established at the urging of the Suharto government in 1975, and designed to serve as a liaison between the military-dominated government and religious scholars, the MUI, for most of the New Order period, had been a fairly pliant interlocutor with the government. In the first years of the post-Suharto era, however, a new MUI leadership signaled its determination to reposition itself as an independent, nongovernmental organization—one which, paradoxically, sought to exercise greater influence over government policies on religion. In the course of repositioning itself in national affairs, the MUI moved to recruit new members from the ranks of the country's Islamist organizations, including the Muslim Brotherhood-inspired PKS, Hizb ut Tahrir, and the Majelis Mujahidin Indonesia. The latter organization had al-Qa'ida sympathies and had mobilized fighters to battle Christian in eastern Indonesia during 1999–2003 (Hasan 2006; Hefner 2003). Self-declared liberal and progressive Muslims were quite deliberately *not* among those invited into the now widened MUI tent (Ichwan 2013).

Consistent with its newly self-proclaimed identity as a "civil society" organization, the MUI also held national conferences and regional conferences, in which its leaders rallied conservative Muslims to militant causes—including calls for the banning of the Ahmadiyah sect, curbs on Christian church-building, or measures to prosecute deviationist groupings on charges of blasphemy (Bagir 2013; Crouch 2014; Fenwick 2015). To provide organizational muscle for its mobilizations, the MUI also established a Forum for Islamic Unity (Forum Ukhuwah Islamiyah), whose local membership drew heavily on hardline toughs willing and able to mount fierce demonstrations against designated enemies (see Wilson 2006). In 2005, the national MUI made clear just who it thought the

most significant of those enemies were, when it released a fatwa in which it denounced "liberalism, secularism, and religious pluralism" (the last defined as the conviction that all religions are true) and called for Muslims to repudiate all three (Gillespie 2007; Ichwan 2013). At the provincial and district level, finally, MUI officials have played a key role in working with police and local officials from the Ministry of Religion (long diffident with regard to such matters) to increase the number of prosecutions of Muslims charged under Indonesia's controversial "blasphemy" law (Lindsey 2012; Fenwick 2015, 17). Through these and other actions, the MUI has sought to provide the country with an agency it never had—an "official national mufti" (Lindsey 2012, 124).

These developments *do* suggest that a more conservative current has gained prominence, or outright dominance, in Indonesian Muslim circles since 1998–1999. Public opinion surveys seem to offer similar evidence. Polls carried out at the Hidayatallah State Islamic University in Jakarta have shown that a significant majority of the Muslim public responds affirmatively to survey questions asking whether they support state-enforcement of some variety of sharia law. No less significant, and drawing on a more recent iteration of the PPIM surveys, Minako Sakai and Amelia Fauzia have shown that, since 2002, there has been a small uptick in the proportion of the Muslim public, from 14 percent to 20 percent, who say they support the establishment of an "Islamic state" (*Negara Islam*; Sakai and Fauzia 2013).

What makes these findings all the more perplexing is a fifth fact with regard to sharia politics in post-Suharto Indonesia: that neither the growth in Islamism nor growing public piety has translated into greater support for Islamist political parties. As van Bruinessen (2013b, 3) has noted, Muslim political parties (including mainline centrist groupings) had captured about 40 percent of the vote in 1999 and 2004. However, in 2009, their share of the vote fell to 25 percent. Far more tellingly, the Islamist parties among the Muslim parties, including the PKS, PBB, and PPP, saw their joint share of votes fall to less than 15 percent. Certainly, as Sunny Tanuwidjaja has pointed out, the decline of Islamist parties should not blind to the fact that "that almost all parties have accommodated religious aspirations and shied away from criticizing controversial religious issues" (2010, 10). Michael Buehler's (2008) important research on the widespread support for so-called sharia bylaws by ostensibly secular–nationalist politicians speaks to a similar point, illustrating the desire of more or less secular nationalists to reap political advantage by signaling their sup-

port for sharia norms. Notwithstanding these currents, when they enter the polling booth, most Indonesian Muslims seem confident that their commitment to Islamic ethical values need not translate into support for Islamist political programs.

Conclusion: Shariah and Democracy

The complex currents of sharia politics in post-Suharto Indonesia point to two tentative conclusions. The first is that, notwithstanding the assertiveness of the proponents of an unreformed sharia, the *maṣlaḥah* sensibility developed by Indonesian Muslims over the past century remains an influence on public ethics, and politics. The distinction seen here between political and social choices can be found of course in all Muslim societies. But its political and, especially, *ethical* consequences here in Indonesia are especially striking.

The second conclusion, however, is no less serious: it is that the reluctance or inability of earlier generations of Indonesian Muslim scholars to develop and socialize an explicit rationale for a reformed approach to Islamic sharia has left them in a discursively vulnerable position today vis-à-vis their Islamist rivals.

There is a broader lesson here with regard to sharia knowledge and politics. In Indonesia, as in much of the Muslim world, the Islamic revival of the late twentieth century was characterized by a kind of society-wide learning curve. As people became more observant, they desired to learn the intellectual details of their faith. As they studied their religion, many concluded that sharia lies at its ethical heart. As they sought to explore the implications of this discovery for politics, however, some believers hesitated. They could see all too clearly that on political matters there is anything but an *ummat*-wide consensus on sharia meanings (Zubaida 2003). This hesitancy has given rise to great discussion and debate, and shows no sign of abating soon.

In Indonesia, this hesitancy has been more consequential than in some Muslim lands because the practice of Islamic education and associational life offered ethical clues for a decisive reformulation of sharia imaginaries. Certainly, this country has its share of Islamists committed to the *etatization* of an unreformed variety of Islamic sharia. To judge by election results, however, that proportion is far smaller than in Egypt, Morocco, or even Tunisia. Here in Indonesia, the proportion is small, I have sug-

gested, *not* because Indonesian Muslims are somehow "less Muslim" than their Middle Eastern counterparts. Rather, the difference has to do with the fact that through their Islamic schools and associations Muslim Indonesians have concluded that God's commands are best realized, not primarily through conformity to fixed and finished *fiqh* prescriptions, but by way of practices consistent with the higher aims of the law (*maqāṣid al-sharī'a*).

However battered it may be by post-Suharto developments, this reformed sharia ethic is still pervasive and real. It is one of the unheralded achievements of modern Indonesian Islamic culture. It is also one key (among many) to understanding how, out of the tumult and violence of the post-Suharto transition, Indonesia has succeeded in developing a functioning and still hopeful democracy.

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PART II

Sharia, State, and Society

CHAPTER 5

Sharia in China: Compromising Perceptions

James D. Frankel

Islamophobia tends to paint Muslims and all things Islamic with a single brush, but turns out to be no more monolithic than the world religion it prejudges. Perhaps that fact is more predictable than ironic. Because Islam is complex and multifaceted, and has historically been adapted to fit diverse cultural contexts, the negative responses it has encountered are likewise contextualized, determined more by local rather than global perceptions. It should not be surprising that debates among non-Muslims over the threat posed by sharia law express a vast array of religious and political perspectives when, over the centuries, and especially today, Muslims around the world have differed in their understandings of what sharia is, both in content and as a concept. Even among those who believe, in principle, that sharia should be implemented, there is no clear consensus on how, where, and upon whom it should be applied in modern societies.[1] The fact remains that sharia is, and always has been, a dynamic phenomenon that has been defined and redefined according to the time and place where it appears. Inasmuch as these definitions and redefinitions are, ideally at least, based upon the foundational texts of Islam, they are part of an ongoing discursive tradition, yet even that discursive tradition has never occurred in a vacuum, and has always been responsive to social,

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economic, political, and cultural realities on the ground, in other words, where Muslims live and breathe. The textual and lived traditions of Islam likewise are, and always have been, inextricably interconnected.

The daunting pluralism of conceptions of sharia has confounded outsiders' comprehension of the subject, especially among the woefully uninformed or willfully misinformed. Thus, fears of "creeping sharia" have captured the imagination of some Europeans and North Americans. In China, leaders and citizens have similar, albeit distinct, concerns about the Islamic presence in their midst. But whereas Western Islamophobes have conjured images of Muslim minorities as jihadist sleeper cells waiting to be activated to overthrow governments, reestablish the Caliphate, and impose a brutal sharia regime, some in China fear Islamic extremism as the source of separatism that threatens national unity.

The distinctions between anti-Islamic sentiments in China and the West are the product of specific historical trajectories and cultural conditions. Anti-sharia outrage and legislation have been the theme of Tea Party rallies and debates in statehouses across the American heartland relatively recently in the post-9/11 era. Misgivings about Muslim customary practices and worry over their connection to the rooting of Islamic fundamentalism in European countries have a slightly longer history. But sharia, as an aspect of Islamic religious practice, has existed in China, in one form or another, for well over a millennium, and has been met with a plurality of reactions, ranging from benign indifference, to tolerance, to suppression, and even prohibition. In the face of such reactions, Muslims in China have, often for the sake of their very survival, redefined the meaning and parameters of sharia. The dynamic evolution of sharia in China has largely been shaped by historical forces within China, but has also been impacted by external influences from the Islamic world and beyond. This story, which began so long ago, is still being written today, and remains influential on both domestic politics and foreign relations of the People's Republic of China (PRC), while also having relevance to the global Muslim and international communities at large.

Since perceptions, interpretations, and implementations of sharia in China have been reactive to the vicissitudinous conditions faced by Muslim communities in China, the approach of this study of the evolution of Islamic religio-legal practices and thought will be historical. We will examine chronologically the circumstances of Chinese Muslims, and their relations with the majority non-Muslim society in whose midst they have lived, and how changing political, social, and cultural factors have

affected definitions, and effected redefinitions, of sharia in China. Echoing the overall approach of this volume, we should keep in mind that Muslims entered China carrying with them the scriptural sources and theological notions they considered foundational to their religion, but their Islam was also their way of life, which inevitably responded and was adapted to their living conditions wherever they resided.

Varying degrees of openness to outside influence and toleration of foreign ethno-religious populations from one dynastic period to another had direct effects on the extent to which Muslim minority communities in China have been able to practice Islam. At the same time, social and cultural pressures to assimilate or else face hostility, or even persecution, motivated Sinicization among Chinese Muslims, sometimes with the consequence of compromises in religious practice. Muslims in China have had to negotiate their ethnic, cultural, religious, and political identities in the alternating light and shadow of their relation to the dominant, non-Muslim culture, society, and state. The ebb and flow of conflict and concord that has often characterized the history of Islam and Muslims in China has led to periodic allowances or curtailments of religious rights under various Chinese governments, which have corresponded to the sporadic growth and decline of Islamic institutions among Muslim communities.

The tumultuous and revolutionary transformations of Chinese society in the twentieth century have witnessed particularly great variation in the living conditions of the country's Muslim citizens, ranging from attempts to integrate Muslims fully in the nation-building enterprise of the Republic of China (1912–1949) to the systematic suppression of religion by the Communist government during the Cultural Revolution (1966–1976). In the PRC over the past six decades, a prevailing emphasis on the cultivation of a secular modernity has endured the evolution from socialist, to nationalist, to postsocialist, neoliberal, state-controlled capitalism. In the most recent progression of this historical dialectic, a period of domestic reform and global aspiration, China's largest Muslim population, the Hui, enjoy relative prosperity and religious freedom, while, by contrast, Uyghur Muslims in the westernmost province of Xinjiang suffer far more restrictive conditions. Predictably, the disparity in the PRC's treatment of its various Muslim constituencies has led to a complex of divergent understandings of how Islam is to be lived in China, including distinct interpretations of the meaning and purview of religious law. Within the historical framework of the current study, we will track the evolving morphology of

the dynamic phenomenon that is sharia, from imperial times down to the present day.

Muslims have been negotiating their place in China for nearly as long as Islam has existed, having arrived there within decades of the time of the Prophet Muhammad (570–632). Thus, they brought with them a religion that was still in its nascent form. According to an oft-retold Chinese Muslim folk story, Islam first came to China during the Tang dynasty (618–906), after the Emperor Taizong (r. 626–649) had a dream foretelling the destruction of his empire and a foreign sage with the power to expel the mysterious evil force threatening the realm. The emperor sent a delegation to the "Western Regions" to seek out the holy man, who turned out to be the none other than the Prophet Muhammad. The Prophet thereupon sent his emissaries to China, who settled there at the behest of the emperor to maintain a pacifying presence in the Middle Kingdom.

Beginning in the late medieval period and continuing until today, as more and more Muslims have found themselves living under non-Muslim rule, scholars in the Islamic world have questioned the legal status of Muslim minorities. Their central question was whether the sharia permitted Muslims to live outside the so-called *Dār al-Islām* ("Abode of Islam"), in the *Dār al-Ḥarb* ("Abode of Conflict"). And, if so, under what conditions? With one-third of the world's total Muslim population living in non-Muslim majority societies today, Khaled Abou el Fadl points out that the "age-old juristic discourse on the legality of residing in non-Muslim territories, while obviously relevant, is somewhat artificial" (Abou El Fadl 1988, 49). Nevertheless, the reality on the ground has been that Muslim minorities living in non-Muslim societies have largely negotiated their existence and their identity according to the exigencies of their environment, yet based on their understanding of being heirs to a received scriptural tradition. China's Muslims historically have shown little interest in these far-removed legal arguments. The justification of their existence so far removed from the birthplace of Islam was self-evident; the fact that they found themselves there was itself proof of Allah's will that they should be there. As we have seen, their own mythology proved sufficient to legitimize their existence in China, their motherland, while allowing them simultaneously to remain faithful to their ancestral religion. Living under the rule of sharia was not requisite, provided that the regime under which they lived permitted them to fulfill their basic religious obligations. By and large, this has been their historical situation.

The story of the emperor's dream notwithstanding, we can confirm that Islam was imported by foreign sojourners during the Tang dynasty. The earliest Muslim residents of China were mainly merchants and mercenaries, who lived in designated foreign quarters in various inland cities linked to the Silk Road or in southeastern coastal ports. Though separated from the general Chinese population, Muslim men of Middle Eastern and Central Asian origin married Chinese women. Their descendants continued this practice of intermarriage, thereby establishing families, and eventually communities that maintained Islamic belief and practice and continued to speak Arabic and/or Persian for generations. The Chinese-speaking Hui Muslim minority nationality (*shaoshu minzu*) of the PRC is purportedly descended from these hybrid origins.

These early Muslim settlers and their descendants enjoyed considerable autonomy in conducting their communal affairs. According to a mid-ninth century traveler's account contained in the *Akhbār al-Ṣīn w'al-Hind* (*Accounts of China and India*), the Muslim community in the port city of Guangzhou had a judge (Ar. *qāḍī*), appointed by the Tang regime, to rule on intra-Muslim legal cases, whereas cases involving Muslims and non-Muslims automatically reverted to Chinese jurisdiction. The mostly Arab community under his authority found him to be just in his implementation of "what is found in the Book of God, the High and Almighty, and of the injunctions of Islam" (Ahmad 1989, 37–38). The outside Muslim observer thus saw the Muslims of Guangzhou upholding the discursive tradition of sharia in China. The Qāḍī of Guangzhou also served as the *imām*, or prayer leader, of the local congregation. We can suppose that Muslim communities in other Chinese cities had similar arrangements, whereby the imperium permitted religious practice and a degree of self-governance according to the principles of sharia. The Tang government welcomed foreign merchants in its commercial centers for the revenue that they brought to the dynasty. But the regime could not protect them from the antiminority backlash of popular uprisings like the Huang Chao rebellion of 878 in which upwards of 100,000 foreigners, many of them Muslims, were reportedly massacred in Guangzhou.

Despite the tragic events toward the end of the ninth century, Muslim enclaves continued to exist around China through the Song period (906–1279). The Muslim communities generally prospered under Song rule, which continued to grant rights of religious practice and limited, intracommunal legal autonomy to foreign residents. At the same time, however, Muslim communities once characterized by their foreignness

underwent the gradual process of naturalization and assimilation into Chinese culture and society.

The Mongol conquests of the twelfth and thirteenth centuries brought war and sociopolitical upheaval to much of Eurasia, including China and an extensive portion of the Muslim world. Yet, in the aftermath of the invasions, in the consolidation of their empire, the Mongols established a period of unprecedented stability in which extensive trade and cultural exchange could take place. The stability of this ethnically, culturally, and religiously diverse empire was effected, in part, through a dynamic system of law, as well as policies intended to enfranchise various subject constituencies.

During his campaigns and reign, Genghis Khān (c. 1162–1227) ruled by decree. These decrees were written down to create the law code collectively known as the *Yasa*, which operated as the law of the land throughout the Mongol Empire. Genghis' successors upheld the *Yasa*, and gradually added their own decrees to it, which varied from one region to another, reflecting local, social, and cultural customs. Tradition maintains that Genghis and his successors consulted religious leaders among their subject peoples, including rabbis, priests, and imams, in the formulation of the *Yasa*, so we can conjecture that aspects of sharia law found their way into the Mongol legal code.

Throughout their empire, the Mongols patronized various religious communities in order to pacify conquered peoples. On the other hand, they also used the curtailment of religious rights, or the threat thereof, to discipline and control groups that did not fully submit to Mongol rule. Sometimes, proscriptive laws reflected the caprice of the Khāns, as when Genghis, who found the Islamic *ḥalāl* method of slaughtering animals distasteful, decreed it illegal under penalty of death, requiring all subjects to slaughter using the traditional Mongolian technique.[2]

By contrast, the establishment of the Yuan dynasty (1279–1368) under Genghis' grandson, Khubilai Khān (1215–1294), brought a revitalization of the Muslim presence in China and, initially, considerable tolerance of Islamic religious practice. For example, the Yuan government sponsored the construction of several mosques, including ones in the capitals of Dadu (Beijing) and Shangdu. Recalling Tang dynasty policy, in the city of Quanzhou resided China's *Shaykh al-Islām* who served as direct liaison between the Muslim community and the Yuan court. Quanzhou also had a *qāḍī*, who served as the local judge and interpreter of Islamic law. At the beginning of his reign, Khubilai allowed Muslims in China to fulfill

such religious duties as fasting in Ramadan and, reversing his grandfather's *Yasa* decree, the ritual slaughter of animals.

As the seat of the greater Mongol Empire, the Yuan dynasty welcomed an influx of Muslims from the Mongols' Central and West Asian domains, many of whom played an important role in the Yuan administration. The Mongol regime thus raised the status of foreign Muslims who brought wealth to the empire via trade with China and whom they recruited to aid in governing the country. Muslims served in important military and civil posts, including several territorial governorships.

The most powerful Muslim official in Khubilai's administration was Aḥmad Fanakati (d. 1282), who served as Finance Minister, and was prized by the Khān for successfully raising tax revenues for the court. In the process, however, he earned the enmity of Confucian ministers for his ruthless methods, in much the same way that the general Chinese population came to resent the Muslim local tax collectors that Aḥmad's ministry had appointed throughout the realm. Aḥmad's Chinese political enemies accused him and his aides of nepotism and corruption. They conspired against him, and blamed him directly when the Yuan economy began to falter in the 1280s. In 1282, Aḥmad was assassinated and his rivals continued their attacks on his character after his death. Swayed by the allegations, Khubilai publicly disgraced Aḥmad's corpse, executed several of his sons and punished several of his appointees. Moreover, in the early 1280s, the Khān punished the entire Muslim community by extension, renewing the prohibition of the Islamic ritual slaughter of animals as well as circumcision of Muslim boys. Muslims in Mongol-ruled China thus experienced a full swing of the pendulum vis-à-vis their ability to implement aspects of sharia.

When Chinese rebels, led by Zhu Yuanzhang (1328–1398), overthrew the Mongols and established the Ming dynasty (1368–1644), Muslims in China did not suffer reprisals on an official level, despite the fact that some had served prominently under the previous regime. But the new dynasty was suspicious of any foreign presence in its midst and instituted policies intended to accelerate the natural progress of assimilation and acculturation that had been transforming the Muslim population for centuries. Laws encouraging intermarriage and the adoption of Chinese surnames combined with an ongoing process of Sinicization (e.g., adopting Chinese language, dress, and material culture), creating a population that was simultaneously Chinese and Muslim.

At the same time, the largely isolationist foreign policy of the Ming dynasty cut China's Muslims off from contact with the greater Muslim world, compelling them to construct their own uniquely Chinese identity. As Muslims became increasingly integrated within Ming society, their autonomy waned. They were Muslim subjects of the Chinese Empire, loyal to its sovereign and beholden to its laws. Consequently, their understanding of sharia shifted from the law of Islamic rule, governing all aspects of life, to a more narrow focus on communal customs of ritual law and individual religious practice. Many Sinicized Muslims pursued a classical Confucian education, which enabled them to take the official examination, a means to social advancement. As Muslim communities shifted focus from their foreign religious roots to embrace Chinese customs and values, a concomitant decline in Islamic knowledge and practice ensued.

The history of Muslim Sinicization reveals a familiar dilemma faced by minorities, Muslim and otherwise, throughout global history, namely, whether to assimilate in order to survive and be accepted into the mainstream society or to assert a distinct religious and cultural identity lest the community be completely absorbed into the majority. The tension created by these rival pressures caused some Muslims to fear for the survival of Islam in China. One of these individuals, a Shaanxi native named Hu Dengzhou (1522–1597), left his homeland in search of Islamic learning he could not find there. He traveled to Central Asia and the Middle East, as far as Mecca. Upon returning to China with Arabic and Persian texts, and the teachings he had received abroad, he embarked on a reform of Islamic education. He and his colleagues translated texts from Arabic and Persian, and began teaching about Islam in Chinese. This *jingtang jiaoyu* ("Scripture Hall Education") system then spread from one Muslim enclave to another, leading to the formation of a curriculum consisting of a significant body of Islamic literature in classical Chinese. These texts, known collectively as the *Han Kitāb* (Chinese Islamic books), expressed Islamic religious subjects using the vocabulary of Neo-Confucianism, and thus represented a harmonization of Chinese and Islamic principles. In this case, the scholars of this community saw (re)interpretation of Islam as a necessary means to its survival in China.

Over the subsequent two centuries, spanning the late Ming and early Qing (1644–1911) dynasties, multiple generations of Chinese Muslim scholars produced hundreds of *Han Kitāb* texts on subjects ranging from Islamic history to Arabic philology. But of these, one author stands out as the most prolific, most systematic, and most famous: Liu Zhi (c. 1660–c.

1730). And of his dozens of distinct titles, one book, *Tianfang dianli* (*Ritual of Islam*, 1710), stands out as the sole *Han Kitāb* specifically to focus on Islamic law. We can infer a number of things about the status and understanding of sharia in late imperial China from this fact. First, the *Han Kitāb*, their authors, and their Muslim audience were products of the Sinicization process described above; they were simultaneously Chinese *and* Islamic. As such, while they were faithful to Islam, they were also inextricably bound to the norms and customs of the Chinese state and society. Their emphasis on matters of religious orthodoxy and orthopraxy implies a deemphasis on the political, civil, and penal aspects of sharia and an acceptance of the sovereignty of the imperial state and the emperor as its legal authority.

Chinese Muslims were subjects of the empire and therefore subject to its laws. Long gone were the days when Muslims lived as a semi-autonomous community apart from the general population with their own foreign legal system. In late imperial China, even conflicts between Muslim factions were referred to the non-Muslim courts, such as when the *Han Kitāb* scholar Ma Zhu (b. 1640) objected to the spread of the Qalandariyya Sufi order in his native Yunnan province. Despite the fact that these were fellow Muslims, Ma Zhu believed their influence to be pernicious and brought them before a Qing civil court on charges of heresy, leaving it to a Confucian authority to rule on the validity of Islamic practice. Ma Zhu won the suit, indicating that the court found his form of Confucianized Islam to be acceptably "orthodox."

Coexistence with their non-Muslim compatriots and the civil authorities required Chinese Muslims to avoid giving any impression that they threatened the sociopolitical *status quo*. The *Tianfang dianli* focuses on ritual law, accommodating the Confucian notion of ritual (*li*) as the central ideal of a harmonious state. In this way, Liu Zhi presents Islam and Islamic law in a manner acceptable to Chinese sensibilities, rather than as a rival system of belief and governance.

Liu Zhi provides some insight into his motivation for undertaking his scholarly work, and particularly why he wrote the *Tianfang dianli*. He was inspired by his first teacher, his father, Liu Sanjie (ca. 1630–1710), a *Han Kitāb* scholar in his own right. In a preface to the *Tianfang dianli*, Liu Zhi explains, "My late father thought that ritual law was not understood clearly" (Liu 1971, a11). Liu Sanjie was distressed by the decline of Islamic knowledge in China and attempted to remedy this by translating a book on Islamic ritual and law, under the title *Tianfang lifa* (Ritual Law

of Islam). Liu Zhi goes on to explain that the *Tianfang dianli* is actually a compendium of a much more voluminous work on Islamic ritual, a translation (from some unknown Islamic source) first begun by his father: "I have undertaken to carry on the will of my late father by translating the book on the ritual law of Islam completely" (Liu 1971, a11). We cannot know for certain which book(s) Liu Sanjie had translated or cited, but Liu Zhi was more generous in providing bibliographical lists of his sources. Generally speaking, most of the legal "texts, especially those (originally written) in Arabic, are standard Sunni Hanafite texts of law and ritual," (Leslie and Wassel 1982, 78) including Burhān al-Dīn al-Marghinānī's *al-Hidāya*.

Delving into the contents of the book, we find Liu Zhi referring to the law of Islam implemented by the Prophet Muḥammad:

> Arabia is none other than the country of Mecca, which adheres to the teaching of Islam. The Sage began his mission in this country. He explained and disseminated the law of the teaching. Until today the people of this country revere the teaching and serve and act according to its rules. They dare not transgress the law even in extremely minute matters … The customs of the people are harmonious and peaceful … All honor the rules of the teaching. Those who transgress the law are few. It is a veritable paradise on earth. (Liu 1971, 12)

Clearly, he idealizes the sharia, but as the law of Arabia in the Golden Age of Islam, not as a rival to the imperial rule under which he actually lived. Elsewhere, Liu Zhi affirmed the Confucian notion of social hierarchy and harmony, subsumed under the Five Ethical Relationships (*wuchang*), especially "the proper relationship between sovereign and subject (which) perfects the state" (Liu 1971, 7). Like other Sinicized Muslims, he placed a high value on loyalty to the Emperor, insofar as he ruled according the Confucian ideals of justice (*yi*) and benevolence (*ren*).

When Liu Zhi addresses sharia explicitly later in the book, he does so in the context of a discussion of personal piety and progress along a path of spiritual perfection, evocative of the Confucian notion of self-cultivation (*xiushen*). This discussion is informed by Sufi ideas of union with Allah, which typically divide the spiritual ascent into three, interdependent levels: *Sharīʿa* ("Law"); *Ṭarīqa* ("Mystic Path"); and *Ḥaqīqa* ("Ultimate Reality"). Liu Zhi thus describes the eternal law as comprising "three vehicles," which "bear all manner of standards and morals in order to

enable the seekers of the Way incrementally to embrace the law" (Liu 1971, 8). For Liu Zhi, following classic Sufi theory, sharia is the foundation of all higher spiritual progress. He calls it the "vehicle of ritual" and states that it "fully contains the Way of Heaven and the Way of Man. It is the regulation of every matter and deed. It is the means of adopting the law for the one who is diligent in cultivating virtue and who respects his own vocation" (Liu 1971, 8). So Liu Zhi acknowledges that sharia is an all-encompassing law. Moreover, according to Roberta Tontini, "[b]y aligning ritual worship to foreign Islamic practices and accepting indigenous patterns of social organization as legitimately 'Islamic,' Liu Zhi's text enabled Islam to maintain its ritual peculiarities while endorsing China's traditional power structure as a congruent manifestation of Islamic law" (Tontini 2015). Thus, Liu Zhi walked a fine line between showing Chinese Muslim theory and practice to be properly "Islamic" and, by couching it in terms of personal spirituality and ritual practice, rendering his presentation of Islamic law innocuous to the Confucian arbiters of morality and the Chinese civil authorities, who might otherwise view it with hostility. The *Tianfang dianli* is the sole *Han Kitāb* text to have been included in the *Siku quanshu* (*Compendium of the Four Treasuries*), the great compendium of Chinese literature commissioned by the Qianlong emperor (r. 1736–1796). The fact the *Siku quanshu* editorial board, made up of Confucian officials, approved the book meant that its contents were deemed acceptable by the Qing state.

The history of Islam in Qing dynasty China is often characterized by a dichotomy of Muslim "concord or conflict" with the state and prevailing social order. We have seen the ideal of concord represented by the highly Sinicized Muslim communities of central and eastern China, those associated with the Islamic-Confucian harmonization of the *Han Kitāb*. Not only was their intellectual tradition in accord with the dominant ideological paradigm of the age, but through their assimilation, these Muslims were also invested in Qing social and political institutions. As such, they were generally perceived as law-abiding, loyal subjects of the Qing Empire. Liu Zhi's writings, and their legacy within the subsequent Chinese Muslim intellectual tradition, certainly played an important role in helping secure a more favorable perception of Islam and Muslims in official circles.

By contrast, the Qing period is also known as a time of political discord in which Muslims in western regions of China staged several major rebellions against the state in the seventeenth, eighteenth, and nineteenth centuries. The first of these rebellions occurred in Gansu province, only

two years after the establishment of the Qing dynasty during the reign of the Shunzhi emperor (r. 1644–1661). His son, the Kangxi emperor (r. 1662–1722), responded to the empire's "Muslim problem" by issuing edicts proclaiming imperial protection for his peaceful, obedient Muslim subjects, as well as tolerance of their religious practice and cultural distinctiveness. The Qing state's attitude is well characterized by Donald Leslie: "Autocratic rule was to be tempered by imperial benevolence; and religious freedom was allowed so long as it did not interfere with good order and obedience to the state" (Leslie 1986, 122). The Yongzheng emperor (r. 1722–135) perpetuated his father's policies, issuing several edicts concerning Muslims of his own. In 1729 he declared, "Hui people … are all children of our country" and "cannot be regarded as separate. As long as they peacefully keep their customs, they are not to be compared with traitors, lawbreakers or those seeking to delude and lead people astray" (Leslie 1986, 122). Another edict the following year made this distinction: "There is no lack among them of loyal servants of the country," but if "the Hui people indeed transgress, laws and statutes exist under which they will certainly be punished" (Leslie 1986, 124). The Qianlong emperor (r. 1736–1796) also maintained this stance, which was put to the test when the regime had to use military force to put down another major Muslim uprising in the 1780s. Benevolence in exchange for obedience, but harsh retribution for rebelliousness was the Qing policy, with an emphasis on law and order. Needless to say, it was Qing imperial law, not sharia, that both the Manchu rulers and their Muslim subjects understood to be in effect. Symbolic of the Qing state's insistence on loyalty to the emperor and the primacy of imperial law over that of Islam, when the Huiziying mosque was constructed in Beijing under the patronage of the Qianlong emperor, the imperial architects designed it facing north, in the direction of the Forbidden City, rather than west, toward Mecca, as prescribed by Islamic law and custom (Brown 2011b). Enjoying the good graces of the regime often meant compromises with traditional interpretations of sharia.

Following the "concord or conflict" model of Muslim relations with state and society in late imperial China, some have inferred a false parallelism between the *Han Kitāb* constituency and the Muslim rebels of western China. That is, since the concord-minded *Han Kitāb* scholars supported the Qing sociopolitical system, and the rebels were in conflict with the government, the latter must have opposed the Confucian foundations of the state and wished to replace it with a different, presumably

Islamic, alternative. This presumption overstates the religious nature of the conflict. The rebellions were most often based on local, economic, and civil disputes. Muslims rose up against local officials siding with their non-Muslim Chinese opponents in disputes that began as small-scale fights over economic and civil issues. Government forces became involved when the fighting got out of hand and threatened to lead to greater instability. As Jonathan Lipman points out, Muslim rebels

> reacted against state or militia violence with violence of their own and thus became rebels in the eyes of the state without any plan to seize territory or set up an antistate or proclaim a *jihad*. In short, we see 'rebel' as a state-created category in most of these cases, not as a description of what the Muslims intended to do. (Lipman 1997, 219)

In other words, the rebels never thought of toppling the government to set up an Islamic state or impose rule by sharia. Even though some Chinese Muslims did find themselves in open conflict with the imperium, in general "they shared a strong sense of *belonging* in China and of the Qing state's legitimacy" (Lipman 1997, 132). In other words, they sought redress of their grievances *within* the Chinese system, not by overthrowing it or separating from it.

While this generalization may be true of Sinicized Muslims—those who embody (albeit in varying proportions) Chinese-Islamic simultaneity—the same cannot be said of non-Chinese Muslims living within the borders of China. As Lipman points out, despite being coreligionists, there is significant difference between the "Sino-Muslims" and "the Turkic-speaking Muslims in Xinjiang, who often did declare *jihad* against the Qing" and remain a thorn in the side of the PRC government today (Lipman 1997, 132). The largest group of Turkic-speaking Muslims in Xinjiang is the Uyghurs, who represent almost half of the province's population today, but were the overwhelming majority when the Qing Empire annexed the territory. When the dynasty first invaded and subdued the western Xinjiang city of Hami in the early eighteenth century, local Uyghur residents immediately rebelled. The Kangxi emperor responded by installing a handpicked, Qing-friendly Uyghur chief in the oasis. When Qing forces later attempted to expand their territorial gains and the Qianlong emperor attempted to use the same strategy of installing local rulers, the results were calamitous. Upon dividing all of Xinjiang into four sub-khanates under Qing rule, rebellions arose throughout the territory. In response,

the Qing regime deployed a multitude of troops to control Xinjiang, in what would become a protracted military occupation.

The Uyghur people have not only a long history of contact with China, but also a history of independence from China. In the eighth and ninth centuries, they controlled a vast empire that was allied with the Tang dynasty. After their empire was overrun by nomadic Kirghiz warriors, the Uyghur people settled in the various oases of present-day Xinjiang, establishing distinct, autonomous city-states. So the Uyghurs were not only independent from China, but also fragmented among themselves for the better part of a millennium. The various oasis khanates embraced Islam at different paces between the tenth and fifteenth centuries, resulting in significant religious and cultural diversity from one region to another. It is therefore difficult to make very many generalizations that apply to all Uyghurs in Xinjiang, with the exception that most object to Chinese domination.

A new wave of Uyghur nationalism emerged in the first half of the twentieth century at the same time that the disintegration of empires around the world was giving rise to self-determination movements. After the fall of the Qing, when the new Republic of China was struggling to maintain its hegemony over the old regime's westernmost territories, Uyghur nationalists established a very short-lived East Turkestan Republic (1933–1934). With support from Stalin's Soviet Union, a second East Turkestan Republic was established in 1944, but fell when the People's Liberation Army entered Xinjiang in 1949. Since 1949, Uyghur reactions to Xinjiang's incorporation into the PRC have varied; some have appealed to Beijing for increased political, cultural, and religious autonomy while remaining part of the People's Republic, whereas others demand complete secession and an independent Uyghur state. Beijing has branded the latter separatists, extremists, and terrorists. Since the 1950s, hundreds of Uyghurs have been imprisoned as dissidents or executed as traitors, while thousands more have been arrested or injured in government crackdowns on protests. Among the Uyghur "separatists," most are secular, albeit culturally Muslim; indeed, most Uyghurs consider Islam to be an important element of their national identity. Only a small percentage of Uyghur independence fighters articulate their aims in explicitly religious terms. This minority invokes the language of militant, political *jihād* associated with Islamist movements, and advocates establishing an Islamic state governed by sharia.

Most Muslims living in the PRC today, however, have accepted the intransigence of their situation and seek accommodation within the mainstream state and society. Like the *Han Kitāb* community of late imperial China, their understanding of sharia, and of Islam more generally, falls within the social, political and legal parameters of what the government allows in terms of practice. Insofar as the state permits them to fulfill their basic ritual and personal religious obligations, most practicing Chinese Muslims are content to live their lives as citizens of the PRC. And the state seems content to tolerate this degree of religiosity among its minority communities, insofar as this helps maintain political stability and national cohesion. Of course, this has not always been the case in the PRC. In its early history, the Communist state hoped that its citizens would embrace its revolutionary ideals and voluntarily discard "backward" beliefs and religious "superstitions." When this hope was not quickly realized, the Cultural Revolution (1966–1976) was declared to hasten progress. Followers of various religious communities suffered persecution and humiliation. For Muslims in China this included the closing of mosques and religious schools, or even having them repurposed as quarters for livestock, including pigs.

After living through a decade in which even their most basic religious practices were hindered, the situation began to improve for China's Muslims with the introduction of *Gaige kaifeng* system of reforms in 1978. Over the past 30 years, as China has emerged as a power on the world stage, her citizens have reaped the benefit in terms of increased economic and social opportunities. Muslims have enjoyed greater religious freedom as the state has made good on guarantees written into the Chinese Constitution, updated in 1982. In particular, the government has supported Islamic practice in two key areas, which comprise two of Islam's Five Pillars: prayer and pilgrimage. In the last 20 or so years, Beijing has boasted of its record of religious tolerance, publishing several White Papers with statistics including the number of mosques maintained with government support, the number of imams trained by the state-run Chinese Islamic Association, and the number of Chinese Muslims given exit visas to attend the annual Hajj in Mecca (White Paper 1997). This information is intended for both domestic and international audiences: while the government wishes to placate China's Muslim population, it also seeks to impress foreign Islamic nations, some of which are important trading partners, with the PRC's kind treatment of Muslims and respect for Islam. Thus, as in imperial times, Muslims in China are granted limited

rights to practice their religion in exchange for loyalty to the state. This transaction is neatly summed up in a 1997 White Paper:

> It is traditional for Chinese religious believers to love their country and religions. The Chinese government supports and encourages the religious circles to unite the religious believers to actively participate in the construction of the country. The various religions all advocate serving the society and promoting the people's well-being, such as … Islam's "praying to Allah to give great reward in this world and hereafter." (White Paper 1997)

In theory, while the Chinese Constitution guarantees certain religious rights, the implementation of sharia in the PRC is technically impossible as it stands in diametric opposition to the staunchly secular ideals of the socialist state. The recognition of a separate legal system, apart from the law of the PRC itself, is anathema to the state's insistence on national unity and order. Moreover, the endorsement of a system based on the teachings of a non-Chinese religious tradition would go against the modernizing objectives and repudiation of backward, "feudal superstition" upon which the Chinese Communist Revolution was founded. Even if China has, as some have argued, entered into a postsocialist phase of its social, economic, and political evolution, the idealization of constant progress toward modernity endures in the national ethos, leaving little room for legal pluralism … in theory.

Officially, the Chinese Communist Party (CCP) recognizes no religious law, including sharia. In Communist theory, religion is (merely) an aspect of culture, especially as it pertains to China's ethnic minorities (*shaoshu minzu*). As such, the PRC government has, under the articles of the Constitution, justified showing limited recognition of "Hui customary law" (*Huizu xiguan fa*), that is, rules pertaining to worship, diet, and life-cycle rituals. But the term for sharia in modern Chinese, *Yisilan jiaofa* (literally, "Islamic Religious Law"), is used only in reference to legal systems found in Islamic countries, and never to the lived traditions of Muslims in China.

In practice, however, the situation of Islamic legal institutions and practices is far more complex than the official status of sharia in the PRC would suggest. Not surprisingly, this narrative is not monolithic and shows a high degree of local variability. Most notably, in regions with a large concentration of Hui Muslims, both the central government and local authorities have shown considerable flexibility in making allowance for Islamic prac-

tice, including certain legal concessions. Matthew Erie's recent fieldwork in Northwest China has yielded intriguing information about the blurring of boundaries between the state legal apparatus and religious leadership within Muslim communities that challenges the "conflict or concord" dichotomy by complicating "ideas of the 'clash' of Chinese and Islamic authorities" (Erie 2015). In localities where religiously devout Muslims are in the majority, Communist authorities have turned to local Muslim elites to participate, intervene, or play a leading role in legal dispute resolution and even adjudication within the court system. In effect, within parameters ultimately defined by government officials, "the Party-State attains consent with Muslim populations through their own institutions, namely, Hui elite who may mediate disputes in accordance with Islamic law or shari'a" (Erie 2015). Erie calls these Hui authority figures "Muslim mandarins," evoking their resemblance to the Muslim community leaders who historically served as liaisons between Chinese imperial regimes and their Muslim subjects.

As Erie notes, there is a certain uneasiness to the collaborative interdependence between the PRC Party-State and the Muslim mandarins because, while it "legitimates socialist ideology in terms of its claims of pan-ethnic inclusiveness, … it also threatens Party-State legitimacy in the event law and policy becomes ineffective without Muslim mandarins' implementation. Hence, such relationships reveal tensions in China's legal pluralism" (Erie 2015). This arrangement, which still often functions *ad hoc* on the ground, helps to maintain law and order among potentially troublesome constituencies; from the viewpoint of the government, "the more Muslim mandarins are bureaucratized into the official system, the less possibility there is for an antistate sharia to develop (e.g., Hui clerics composing fatwa against the Chinese state). Yet, on the other hand, it simultaneously threatens to blur the distinction between "formal" and "informal" law upon which the legitimacy and security of any state relies. Thus, "the Party-State's reliance on religious figures, particularly Hui clerics and shaykhs, may potentially endanger its own legitimacy," (Erie 2015) not to mention contravene its supreme ideological objective of eliminating any and all vestiges of backward, nonsecular, premodernity.

The PRC may justify such concessions as the "Muslim mandarin" system on the grounds that minority communities, like the Hui, who assist the country in its overarching nation-building enterprise may be rewarded with a modicum of autonomy. Indeed, just as Chinese emperors had done in the past, the CCP distinguishes between its law-abiding Muslim citi-

zens and those it considers to be sources of instability. Tensions over the Xinjiang problem have increased in recent years as Beijing still considers a large percentage of the Uyghur population to harbor "splittist" tendencies. Subsuming the problem under the "Global War on Terror," the government has linked Uyghur separatism to militant Islamist extremism, and has therefore curtailed many religious rights in Xinjiang, where police have raided schools for housing "illegal preachers" and children have been arrested for independently studying the Qurʾān (Turdush 2012). Uyghur Muslims are forbidden to linger in or around mosques after congregational prayers, and are discouraged to attend any but their own local mosque. They have also received a disproportionately low number of permits to travel abroad, including to Mecca, as compared with their Hui counterparts. Like prayer and pilgrimage, *Ṣawm*, or fasting in the month of Ramadan, is one of the pillars of Islam. In recent years, Communist officials in Xinjiang have stepped up efforts to disrupt this practice, including banning fasting for civil servants, students and teachers, and delivering food to religious leaders and village elders during daylight hours (Associated Press 2012). In the language of the Chinese Constitution, "the state protects normal religious activities," but how it defines "normal" sometimes appears arbitrary. Article 36 affirms: "No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion." However, it also asserts that, "no one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state." Obviously, in the case of the curtailment of religious rights among the Uyghurs in Xinjiang, the latter clause is operative.

Whether the PRC government engages in mosque renovation and construction or obstruction of Islamic practice, it is clear that the law and order of the Chinese state is paramount. This has been the rule for Muslims in China ever since they first arrived in the Tang dynasty. The foregoing overview of the history of the relationship between state authority and Islamic practice is hardly exhaustive. More research into specific interpretations of sharia in Chinese history and contemporary China is required. Yet, based on this overview, we can make a few other basic observations about the dynamic evolution of sharia in the Chinese context. First, as we have seen, the notion of sharia is itself a fluid one that defies static definition, and has been interpreted in many different ways by Muslims over the centuries.

Muslims began their history in China as an alien community and were afforded a limited extent of legal autonomy, though ultimately they were answerable to the imperial authorities. The longer they remained in China, the more Sinicized they became, eventually leading to a state of Chinese-Islamic simultaneity. A higher degree of assimilation will cause any minority to become more integrated into the mainstream majority. Consequently, unlike other Muslims living in the *Dār al-Islām*, Muslims in China have come to accept their condition of living under foreign jurisdiction that did not permit the application of Islamic law beyond the usages of individual or communal religious practices, and some, like the *Han Kitāb* scholars, reinterpreted the purview of sharia accordingly. The Chinese law of the land leaves no room for the implementation of sharia as a comprehensive legal code that includes not only religious but also civil, political and penal aspects. So Chinese Muslims, by necessity, have adopted an abridged view of sharia. Generally speaking, the more Muslims have fallen under the centralized rule of a non-Muslim government, the less autonomy they have enjoyed, and their religious rights have risen or ebbed according to the interests of the state.

Today, more than ever, those interests are interconnected in a complex global network. While Muslims may make up a relatively small percentage of the enormous population of the People's Republic, they are nevertheless linked to a worldwide Muslim *Umma* of comparable size. The Chinese government cannot flagrantly neglect the rights of its Muslim citizens lest it risks offending the religious sensibilities of its economic, military, and political partners in the Islamic world. Besides trade with Muslim countries, as China seeks to expand its financial markets, it has recently tried to court Muslim investors and has made open accommodations of sharia by trying to transform Hong Kong into an international haven of Islamic financing and a market for sharia-compliant bonds (*ṣukūk*) (Wong 2012). Inviting Islamic influence from outside, and allowing a growing number of its Muslim citizens to travel and gain exposure to alternative perspectives on Islam, will China have to make further domestic accommodations to sharia compliance in the future? Or will it once again perceive Islamic influence and the specter of "creeping sharia" as a threat to its own hegemonic concerns? Will it actively engage the Muslim world, and its own Muslim populations, and promote greater understanding of Islamic traditions, or will it succumb to the Islamophobic fears and facile stereotyping that so many others in the world are embracing?

Notes

1. See http://www.pewforum.org/2013/04/30/the-worlds-muslims-religion-politics-society-overview/ (02/25/14).
2. The Mongolian slaughtering procedure is almost antithetical to that of Muslims. In the latter, the animal is stood upright, and its throat is cut across the jugular vein and carotid artery whereupon all blood is drained from the body. The Mongol butcher lays the animal on its back, restrains it, then slices the chest open and tears out the aorta to cause lethal internal bleeding while retaining all blood inside the carcass. Only after the internal organs are removed is the blood drained and used to make a kind of sausage (Allsen 2001, 128–129).

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CHAPTER 6

Interplay of Sharia Projects: Between *Ketuanan Melayu*, Islam, and Liberal Rights in Malaysia

Timothy P. Daniels

Introduction

There has been an intensification of demands for sociopolitical reforms—good governance, fair elections, equality before the law, inclusive nation-building, and religious freedom—in Malaysia, from the late 1990s to the present. The sacking of charismatic Deputy Prime Minister (PM) Anwar Ibrahim, the Asian economic crisis, and the reverberating effects of the Reformation Movement in neighboring Indonesia, all contributed to the emerging intensity of calls for reform. These demands, emanating from political parties and civil society organizations, have increasingly challenged the hegemony of the electoral authoritarian government. It is important to recognize that this growing reform movement developed in the midst of several decades of Islamic resurgence that precipitated a stronger presence of Islam in the public and cultural spheres (see Kamarulnizam Abdullah 2003;

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Liow 2009; Daniels 2013b; Hardwick 2013). The ruling United Malays National Organization (UMNO)–led National Front coalition and the Anwar Ibrahim–led opposition coalition have staged two highly competitive national elections in 2008 and 2013.[1] However, I contend that it is not the opposing coalition-based formations but, rather, the crosscutting commitments to civil liberties, minority rights, and Malay and Muslim preeminence that are most significant for understanding sociopolitical dynamics in Malaysian society (cf. Weiss 2006). That is, the constituent minority parties in both coalitions share an interest in civil liberties and equal rights, while UMNO and PAS (Parti Islam SeMalaysia, Islamic Party of Malaysia), members of opposing electoral coalitions, coalesce around Malay and/or Muslim hegemony. The cultural politics are more fundamental and not easily contained within electoral politics. As Özyürek (2006, 22) notes, a new political anthropology is well equipped to deal with the transformations of "power relations and political legitimacy in late liberalism." In this chapter, I examine *sharia dynamics* in Malaysia through discussing the diverse ways in which political parties and nongovernmental organizations (NGOs) have engaged with the Islamic discursive tradition and created multiple mixtures of sharia conceptions with other ideas and practices. Seeking to transcend the dichotomy of Islam/islams in the anthropology of Islam, I do not consider any of these interpretations of sharia to be any more "real" or "authentic" than any others. Instead, I look to infer the projects they are used to constitute and the interplay between them within sociopolitical dynamics.

For this study, I draw on my ethnographic research in several sites in peninsular Malaysia during 2010–2012 and use discourse and contextual analysis to make interpretations from the data I collected. I infer cultural knowledge from spoken and written discourse, and strive to discern the articulation of conceptions of sharia to other ideas within particular sociopolitical projects. In addition, I situate various projects within their social contexts and analyze their interplay with each other and interconnections to processes of nation building, negotiations of racial and religious diversity, expansions of the space and place of Islam, and secularization. This study advances on the works of Peletz (2002, 2013), Feener (2013), and others that concentrate only on state sharia projects to the exclusion of the sharia projects of nonstate actors. Here, I maintain that only a more extensive analysis of the dynamic interplay of various sharia projects can provide an understanding of sociopolitical processes at work in Malaysia.

Before presenting my analysis of spoken and written discourse of leaders and members of political parties and NGOs, civil servants, sharia court officials, scholars in government think tanks, and contextual analysis of sociopolitical projects, I provide some brief historical background of sharia in Malaysia. I also use a few public political events or what Holland et al. (2007, 14) call "dramas of contention—conflicts and differences of opinion that captured public attention"—to demonstrate key social dynamics at work involving state and nonstate actors. Finally, I discuss the interplay of several sociopolitical projects and interpret what these dynamics mean in relation to multiple versions of modernity, secularism, and political Islam circulating in Malaysia and global society. I argue that the way these sharia and other sociopolitical projects are interacting is driving reforms in gender relations while also exacerbating tensions between racial and religious groups, tensions that are moving Malaysia in the direction of greater "sharia-tization" and a more enchanted modernity.

Sharia, Colonialism, and Postcolonialism

Islam spread from India, China, and Arabia into Southeast Asia beginning around the thirteenth century and blended with local cultures throughout the region. In the Malay Peninsula, sharia was combined with Malay *adat* (customs), which included Hindu-Buddhist-related ideas and practices as well as bilateral and matrilineal kinship principles. Malay sultans adopted Islam and implemented sharia in conjunction with customary laws.[2] With the advent of British colonial era, the British made English common law applicable in Malaya, checking any potential expansion of sharia. Islamic courts were lowered in standing and their jurisdiction reduced primarily to overseeing matrimonial and personal morality cases, a pattern Hallaq describes for much of the colonized Muslim world (Kamali 2000; Hallaq 2009). However, Islamic laws were codified and institutionalized and included within the federal court system until the *Courts Ordinance 1948* that eliminated sharia courts from the federal system (Kamali 2000, 27). This "secular" format for state-level supervision and management of sharia family and personal laws *below* federal-level civil High Courts was continued in the postcolonial system. It was altered in 1988 with the United Malays National Organization (UMNO)-led constitutional amendment Article 121 (1A) that raised the authority of the sharia courts to handle matters that fall under its jurisdiction (Kamali 2000, 27; Abdul Samat Musa 2003, 104–105). This slight tweaking of the secular format, under PM

Mahathir Mohamad, was later to become a principal target of liberal rights organizations protesting the unwelcome authority of sharia courts in conversion and child custody cases involving Muslims and non-Muslims (see Martinez 2008; Moustafa 2013).

Malay and Islamic Sovereignty

The UMNO, a Malay nationalist political party, has led the multiracial and multireligious National Front (*Barisan Nasional*, BN) that has ruled the Malaysian federal government since political independence in 1957. UMNO has facilitated the implementation of traditional Sunni interpretations of sharia in family and personal law cases within state-level courts overseen by religious councils and ultimately by the sultans. UMNO political elites and affiliated *ulama* interpret sharia within a secular nationalist modernity project, linking Islamic notions to conceptions of the Malaysian nation, multiculturalism, development, and modernization. For instance, PM and UMNO president Najib Tun Abdul Razak stated in his keynote speech to the UMNO National Convention during October 2010:

> What we struggle for today is not something new. To the contrary, this is the continuation of the aspirations of Malays together with the people of Malaysia at the time we decided to demand independence. Actually, ever since that time, we have consistently held on to three main principles, that is, first, Malay solidarity as the foundation of national unity. Second, Islam as *dīn* and third, a prosperous country based on social justice.

The Malay category is set aside and prioritized as the foundation of the national imagined community, a cultural model sometimes referred to as *Ketuanan Melayu* or Malay sovereignty. Islam, long understood in precolonial and colonial contexts as an attribute of Malays, is here considered the *dīn* or way of life of Malays. After more than three decades of Islamic resurgence, this behavioral expectation of Malay-ness has risen in significance. In addition, this image of sovereign Malay Muslims living according to the norms of Islam is connected with the goals of economic and technological development and modernization.

After citing a poem lauding presumed Malay ancestral characteristics of flexibly accommodating customary principles with sharia and faithfully serving the Muslim community, UMNO President Najib proceeds to

further elaborate on their approach to sharia and its connection to Malay leadership of a diverse Malaysian society and economic modernity.

> In fact, in terms of those Malay ancestors, they have passed the test of time. This personality is also what has caused Malays to be received as leaders within a diverse society. This attitude is also a resource for a people who are trusted to carry national leadership. Even more beautiful again, the trait of Malay leadership emphasized here, after being purified with the arrival of the teachings of Islam proclaimed, taught, and supported the *wasaṭiyyah* approach. *Wasaṭiyyah*, is a method of carrying out the life of an individual or society in a balanced and universal fashion within all areas especially within challenges related to solidarity and nationality … After that, from time to time, the teachings of Al-Quran together with the *Sunnah* neatly planted and woven into the tapestry of the everyday life of Malay people. Since then until now, Malay peoples' values are heavily colored with taking the *wasaṭiyyah* or middle course. Referring to the interpretations of '*ulama*', it is explained that the *ummat wasaṭiyyah* overall is an *ummat* that is just and moreover has the energy to develop and work hard for a prosperous life in this world and in the hereafter.

Within this elite UMNO ideology, *wasaṭiyyah* fit with the already-present flexible and accommodating character of ancestral Malays who embraced Islam.[3] This particular formulation of the "middle path" appears to be a complex concept that works as a miniature theory that organizes and provides a framework for understanding many domains in which Malays have adopted a position in between two extremes.[4] Instead of extending equal citizenship to all Malaysians or restricting citizenship only to Malays, they negotiated a "social contract" whereby citizenship is extended to all Malaysians but full belonging or *tuan* status is reserved for "indigenous" Malays. It also applies to adopting "Islam as the religion of the federation" together with "religious freedom" for non-Muslims. UMNO President Najib, following the framework laid out by former PM Mahathir Mohamad, underscores the importance of *wasaṭiyyah* for economic development and modernization. Not only is modernity compatible with Islam, Muslims taking the "middle course" are especially well suited to modernity. Similarly, *wasaṭiyyah* navigates between the extremes of implementing *ḥudūd* punishments and treating serious violations of Islamic mores to the whims of individuals by establishing sharia criminal laws including *ta'zir* or lesser discretionary punishments. UMNO-led federal governments have continued the "3-5-6" limits set out in the *Muslim Courts*

(Criminal Jurisdiction) Act of 1965 (as amended in 1984) that restricts sharia courts from imposing any punishments that exceed three years of imprisonment, 5000 RM (*Ringgit Malaysia*, Malaysian currency) fine, or six strokes of the rattan.

Although UMNO's format for linking race, religion, and nation has persuaded many Malaysian Muslims and non-Muslims over the years, it has not achieved total hegemony. Malay rights organizations, such as PERKASA (*Pertubuhan Pribumi Perkasa*, Organization of Empowering Indigenous Peoples of Malaysia) and GERTAK (*Gerakan Kebangkitan Rakyat*, People's Awakening Movement), have emerged shoring up some support for *Ketuanan Melayu* and attacking its detractors and opponents of UMNO. For instance, PERKASA arose in the aftermath of the 12th General Election of 2008 in which UMNO lost five states to the opposition and its two-thirds majority in the Parliament. In my interview with a few PERKASA leaders in Kedah, they blamed the electoral loss in that state on the "defection" of large numbers of Chinese and Indians from *Barisan Nasional*. Kedah is a northern state with an over 75 percent Malay majority where PAS and UMNO have had hotly contested elections for several decades (see Daniels 2013a). This Malay rights organization lists its main goals as Islam, Malay and *Bumiputera* rights, Malay sultans, and Malay language, all conventional symbols of Malayness evoking *Ketuanan Melayu*. Most of their public discourse surrounds these issues. For instance, the head of PERKASA in Negeri Sembilan, addressing the topic of "strengthening requirements for citizenship," is quoted in their newspaper, *Suara Perkasa*, as stating that "Chinese and Indian people, and other minority ethnic groups within our country are very easy to respond angrily whenever matters related to Malays come up, especially when religious issues and sultans are discussed" (November 1–15, 2010). The article argues that applicants for citizenship must be required to acquire a better understanding of the history of "Tanah Melayu," the land of Malays.

PERKASA and many other Malay rights organizations are quick to criticize PAS and PKR (*Partai Keadilan Rakyat*, People's Justice Party) for selling out the Malay race and occasionally use Islam or sharia as a metaphor for Malays. Another article in *Suara Perkasa* complains of visible alcohol cans in the garbage next to a Selangor state government building and asserts:

> This is proof the upper-level state leaders suffer from an extremely weak administration … not more than four of the state Exco [Executive Council]

> members are Malay within the Parti Keadilan Rakyat's state administration. It's as if they have no voice or power because the majority of Exco members are from non-Malay groups. (December 1–15, 2010b)

Alcohol cans in garbage bins near the PKR-led state government's office building are symbols of the lack of Malay leadership. Thus, if Muslim opposition forces are shown to not be upholding sharia among their non-Muslim cohorts, then this is evidence of their failure to carry on the struggle for Malay rights.

On the other hand, PAS (Parti Islam SeMalaysia) has mounted a significant ideological and political contest over the last three decades against both UMNO's and Malay rights organizations' manner of linking race, religion, and nation. The Islamic Party of Malaysia's long-range goal is the establishment of an Islamic state that will fully implement sharia including *ḥudūd* and *qiṣāṣ* criminal punishments. *Ḥudūd* are fixed punished for certain crimes (*ḥadd*) mentioned in the Qur'an and *hadith*, and *qiṣāṣ* is retaliation for the crimes of homicide or wounding. Rather than the *Ketuanan Melayu* championed by UMNO and PERKASA, PAS proposes *Ketuanan Islam* or Islamic sovereignty. During an interview I conducted with him in 2012, Tok Guru Nik Aziz, then governor of Kelantan and spiritual leader of PAS, told me, "In Malaysia, there are two courts. There is the civil court and the sharia court. Who said it is supposed to be this way? In the time of the Prophet Muhammad, in the time of the caliphs, there was only one court." He exclaimed that when they gain control of the state, there would be only one court of law, the Shariah Court. PAS rejects the "secular" arrangement of relegating sharia courts to handling Muslim family and personal criminal laws on the state level, while the civil High Court handles all manner of cases on the state and federal levels. PAS has passed two *ḥudūd* and *qiṣāṣ* enactments in Kelantan in 1993 and Terengganu in 1999, but was not able to implement them due to federal-level restrictions. They remain dedicated to the full implementation of sharia despite some fallout in the Anwar Ibrahim-led opposition coalition, *Pakatan Rakyat*, of which they are a member together with PKR and DAP (Democratic Action Party). PAS leaders view the establishment of an Islamic state as a Muslim responsibility:

> Governing and administering the country (*negara*) is actually included with religious tasks. This is demonstrated by Rasulullah S.A.W. who himself served as the Prime Minister of the first Islamic State (*Negara*) in Madinah

> Al-Munawarrah and every day supervised the administration of the country's affairs … Through the Constitution of the Sky called Al-Quran, Allah SWT delivered the revelation that is not just suitable for commanding prayer and fasting, but instead covers criminal laws, jihad, distributing inheritance, proper treatment of prisoners of war, appointing workers, leading soldiers, resolving household problems and handling sexual and property crimes. (Nik Abdul Aziz 2010, 27–28)

According to PAS leaders, the obligation for Muslims to establish an Islamic state is rooted in the example of Prophet Muhammad, the *Rasul* or Messenger of Allah, and the sacred constitution, Al-Qur'an, provides the laws and ethical norms for the state to implement. Combining their notion of a broad operationalization of sharia that extends into all domains of life with the contemporary idea of the "nation-state" does not pose any problem for them. They believe that the revealed *ḥukum* (laws) should be applied by, and provide the guiding principles of, whatever sort of polity (or *negara*) exists. The current problem from their perspective is not that Islam is connected with the state but that "secular" leaders are in control of the state. "The secular" here refers to UMNO leaders' lack of commitment to fully implementing sharia, including quite notably the *ḥudūd* penal code. Not only has PAS been campaigning for installing *ḥudūd* laws for several decades, but they have also institutionalized a program called *Hari Hudud* or *Hudud* Day in which they try to educate and raise public awareness about Islamic law. In fact, many of my interlocutors in Kelantan tended to respond to my general questions about sharia with statements about *ḥudūd*. As a result of PAS political campaigning, the Islamic penal code has become magnified within many of their supporter's models of sharia.

In the process of challenging UMNO-BN (*Barisan Nasional*) hegemony, the *ulama* leaders of PAS formulated competing notions for imagining the Malaysian nation, multiculturalism, and economic development. Drawing upon religious sources that emphasize piety over race or ethnic identities, they stressed virtuous Muslim identities over Malay-ness. In their model of *Ketuanan Islam*, Muslims rather than Malays would be the rightful leaders and full citizens of the Malaysian nation. However, they also promote the appointment of non-Muslim local leaders and need and class-based criteria rather than race for the allocation of goods and services. In addition, PAS leaders criticize the mega-projects and elitism of the UMNO-BN modernity project and argue for a populist and class-conscious economic approach that infuses sharia into processes of consumption and distribution (see Daniels 2013a) (Fig. 6.1).

Fig. 6.1 UMNO and PAS banners in Kampung Melayu Ampang, Selangor. *Photo*: Timothy P. Daniels

UMNO-Islamic NGO-PAS Dynamic

The collision between UMNO's *Ketuanan Melayu* secular nationalist project and PAS' *Ketuanan Islam* extensive sharia religious project is mediated by the *dakwah* (proselytizing) activism of numerous Islamic NGOs. These civil society organizations, such as ABIM (*Angkatan Belia Islam Malaysia*, Malaysian Islamic Youth Movement), JIM (*Pertubuhan Jamaah Islah Malaysia*, Malaysian Islamic Renewal Body), Malaysian IKRAM Body, PUM (*Persatuan Ulama Malaysia*, Malaysian Ulama Association), RICOI (Research and Information Centre on Islam), MACMA (Malaysian Chinese Muslim Association), and PERMIM (Malaysian Indian Muslim Association), engage in a wide variety of *dakwah* activities trying to enhance and spread Islamic knowledge. They are generally in support of stronger and more extensive implementation of sharia, including Islamic penal codes, but have a wide variety of ideas about how to arrive at the point in which Malaysians are ready for it. Most stress educating the Malaysian public first, Muslims and non-Muslims, about sharia and/or creating a positive ethical social environment before enacting *ḥudūd* and

qiṣāṣ laws. Many of the Malay Muslim NGOs have not made the shift away from equating Malay and Muslim identities as fully as PAS and remain committed to both *Ketuanan Melayu* and *Ketuanan Islam*. For instance, Zaid Kamaruddin, the president of JIM, told me:

> Of course, from a principled point of view to us it is not the *Ketuanan Melayu* but a Muslim or Islamic system. Ours is beyond this small boundary of Malaysia, but the problem for the moment, from our point of view, is that as an *ummah* from the world we are separated by nation-states. So the context of *Ketuanan Melayu* or the supremacy of the Malays is not the basis of our struggle. But they can justify it, because actually the term *Melayu*, according to one of the theories, the Malays are the people of this area who accepted Islam. And also in the Constitution it says a Malay, ideologically, it is not a racial term; Malays are defined as Muslims. So, in that case both approaches [UMNO's and PAS'] become very close, if you say that *Melayu* means Islam. But they got to live up to it … But we do argue technically the constitution of a Malay should be Islam. So you should hold on to this correct understanding. Then there is a meeting point between what everyone says if *Melayu* means Islam.

Even if they believe in the eventual transformation to an Islamic system, they still see value in having the current state led by Malay Muslims. Many of the members of these Islamic civil society organizations felt that the current tensions between Malaysian Muslims and non-Muslims were caused by anti-Muslim forces in Malaysia and global Christian forces unifying to attack Islam. For instance, Ustaz Zakaria, a member of ACCIN (Allied Coordinating Committee of Islamic NGOs) told me, "The IFC or Inter-Faith Commission was a way for non-Muslims, especially Christians, to seize power over Muslims."[5]

What I would like to stress here is that these numerous and diverse Islamic NGOs play an important role in checking the UMNO-led state and PAS when they appear to be violating Islamic or Malay hegemony. To demonstrate this, I would like to briefly discuss two dramas of contention. The first surrounds the forming and naming of a multireligious council under the PM's department of the federal government. In the wake of several highly publicized and contentious conversion and child custody cases, liberal rights organizations formed an Article 11 coalition calling for religious freedom and drafted legislation for the establishment of an Interfaith Commission for Malaysia (ICM).[6] In response, the federal

government held two interreligious dialogues involving the Malaysian Consultative Council on Buddhism, Christianity, Hinduism and Sikhism (MCCBCHS), JAKIM (Department of Islamic Development Malaysia), and IKIM (Institute of Islamic Understanding Malaysia) before announcing that the conditions in Malaysia did not call for an Inter-Religious Council (Martinez 2008, 133–134). JAKIM and IKIM, two government Islamic think tanks with connections to a national network of government *ulama*, sat with representatives of other religious communities. Islamic NGOs and PAS were opposed to the call for an ICM and argued it was an attack on Islam and Muslim rights to practice their religion. The coalition ACCIN issued an alarmist pamphlet titled in translation "Islam is Threatened. You need to Act, Widely Distribute this Information. Abolish the IFC." It argued that the proposal for what they labeled an "Inter-Faith Commission" was an attack on "Allah's laws" which must take precedence over international human rights norms created by humans. The "Abolish IFC" pamphlet stated:

> These international norms do not differentiate between Muslims and non-Muslims. For Muslims, regulations for their lives would no longer be Islam but rather these international norms that were created by humans. Is it just hoped that Islamic teachings that contradict these international norms would be eliminated. This means that Allah would have to bow down to international norms. This destroys the religious convictions of Muslims. (2005, 5–6)

Subsequently, opposition to an "interfaith commission" grew among Islamic NGOs and in the broader Muslim community. The terms "interfaith" or "interreligious" were perceived as a symbol of this organized non-Muslim attempt, with international support, to undermine the supreme position of Islam in Malaysia. When IKIM, the Islamic think tank within the PM's Department, restarted the process of forming a multireligious council for dialogue, one of the main issues was the name of the council. At the inaugural meeting, which I attended in 2010, the council was called the "Committee for the Promotion of Religious Understanding and Harmony" and ACCIN and the Malaysian Ulama Association were part of it. Thus, the UMNO-led state was perceived as caving in to influential non-Muslim minorities with global backing, and Islamic NGOs felt they had to check the state and bring it back on the course of defending Islam.

The second drama of contention involves the controversy over whether the Catholic Church should be allowed to use the word "Allah" (*kalimat Allah*) in its weekly publication *The Herald*. The 2009 decision of the High Court that the Catholic Church had the constitutional right to use the word "Allah" was met with some sporadic incidents of violence and attacks on houses of worship. The UMNO-led government filed an appeal against the High Court's decision and mobilized corps of government and UMNO-affiliated *ulama* to research and write about how *kalimat Allah* should only be used by Muslims. Malay rights groups and Islamic NGOs were also galvanized into action opposing the court's decision. Many initially justified restricting Christian usage in the interest of not confusing the average Malay who may read Malay-language Catholic publications. However, PAS and PKR rejected this reasoning and publicly supported the court's decision and the right of Christians to use the word Allah noting that non-Muslims have used the word to refer to God in Arabic-speaking societies for a long time and continue to do so. They interpreted the drive to restrict Christian usage as an expression of Malay chauvinism. This "cosmopolitan" position, not upholding the special position of Malay Muslims, did not convince much of the Malaysian Muslim community. Most Islamic NGOs and Muslim intellectuals were also persuaded by the extensive literature *ulama* produced arguing that *kalimat Allah* is uniquely connected to *Tauhid* (Islamic monotheism). The PAS *ulama* council met not long before the 13th General Election and changed their position to be in concert with most organized groups of the Malaysian Muslim community. On October 14, 2013, the Court of Appeals unanimously ruled "against allowing the Catholic Church to use the word 'Allah' in its weekly publication *The Herald*, saying that the government did not impugn on the Church's constitutional rights in banning the use of the word" (*Malay Mail Online* October 14, 2013). Thus, the swinging of Islamic NGOs in favor of the UMNO-led position checked PAS' attempt to practice its alternative multiethnic approach and motivated them to reengage and reinterpret religious sources. This UMNO-Islamic NGOs-PAS dynamic reinforces and reproduces the centrality and hegemony of *Ketuanan Melayu* and *Ketuanan Islam*.

Sisters in Islam, Anwar Ibrahim, and Secular NGOs

However, these hegemonic sharia projects are increasingly challenged by SIS (Sisters in Islam), the Anwar Ibrahim-led People's Justice Party (PKR), and secular human rights organizations. SIS is an Islamic feminist

and human rights organization that combines Islamic concepts with the dominant global culture of "human rights," gender equality, and the "secular" individual. SIS and many international scholars in their network, such as Amina Wadud, Shad Saleem Faruqi, and Abdullahi Ahmed An-Na'im, promote a reinterpretation of the sources of sharia in the direction of bringing them in line with the "liberal rights" of individuals, symmetrical gender equality, and a "secular" nation-state. In an issue of SIS' bulletin, Abdullahi Ahmed An-Na'im, an internationally recognized scholar of Islam and human rights, wrote:

> Rather than viewing secular and religious foundations of human rights as incompatible rivals, I would emphasise the interdependence of Islam, human rights and secularism defined as the religious neutrality of the state. In fact, I need the state to be neutral regarding religion so that I can be Muslim by my own free conviction and not out of fear of the coercive powers of the state. (2007, 3)

In contrast to the Malay and Muslim organizations discussed above, Abdullahi considers the neutrality of a secular state to be congruent with the foundations of Islam. He arrives at this position through breaking strong hermeneutic links with the script-based sources of sharia and utilizing a methodology that escapes the traditional literalist approach by reading "human agency" into the early processes of revelation, interpretation, and practice. From this perspective, the lexical and technical meanings of the revealed texts were based in particular historical contexts in order to deal with certain issues, concerns, and situations. Hallaq (2004, 45–48) suggests that such new methodologies are required to remold traditional legal theory to fit with the "powerful values, institutions, and epistemologies" of a globally dominant modernity. Similarly, Universiti Teknologi MARA law professor Shad Saleem Faruqi argued for an "Inter-Faith Commission" and legal reforms in the direction of realizing freedom of religion in Malaysia:

> An Inter-Faith Commission must be set up which can assist to draw up some ground rules. Religious preachers need to be told that no religion has a monopoly on the truth; that there are many ways of finding salvation … Just as with the right to propagate, the right to convert is part of the constitutional and international right to freedom of religion. However, though conversion is an intensely personal decision, its exercise must be regulated by the law if the conversion adversely affects the rights of others. The recent case of Sgt. Moorthy highlighted the pain and anguish a conversion can cause to the non-converting spouse. (2007, 6)

Rather than Malay and Muslim hegemony, he promotes religious pluralism and religious freedom for believers of all faiths to propagate their religions. Moreover, he argues for reforms in laws governing conversion and apostasy cases along the lines of bringing them into concert with international laws, constitutional guarantees, and "the spirit of Islam" which includes the principle that there should be no compulsion in matters of religion (ibid.).

SIS, like many of the international Muslim scholars in their network, forges a reformist path within the Islamic discursive tradition that diverges from classical legal theory and doctrine. They combine reformulated conceptions of sharia with modern western notions of "gender equality," individual civil liberties, and privatization of religion. SIS is opposed to the implementation and enforcement of sharia criminal laws they argue discriminate against women and encroach on the freedom and civil liberties of individuals. SIS' bulletin coeditor and first male associate member, Shanon Shah, criticized state-enforced sharia criminal laws:

> In effect, turning personal sins into crimes against the state radically alters the relationship between the believer and his or her God from one of personal piety to one of duress. Furthermore, an individual's personal relationship with God is transformed into a matter of public policy. In any sensible democracy, when policies have such far-reaching implications, the public has the right to debate them extensively and offer as many divergent viewpoints as possible in a civil manner. (2007, 15)

Shanon frames Islamic ethical norms as personal and private matters that should be out of the purview of state and public policy. Moreover, what he considers the unwarranted intrusion of the state into issues of personal morality that adversely affects Muslims and non-Muslims should be the subject of open debate in civil society. This articulation of Islamic ethical norms with privatization of belief, participatory democracy and pluralism, advocates a more extensive secularization of Malaysian society.

SIS situates its feminism within a "religious secularist" perspective that reengages religious texts and produces reinterpretations and new readings of them, which are congruent with the dominant global culture of "human rights" and western notions of symmetrical "gender equality." Many SIS scholars have argued that patriarchal cultures of many traditional scholars influenced their readings of religious texts and shaped their gender-biased rulings that have been adopted by jurists in Malaysia and

in other Muslim societies. Thus, SIS actively challenges local interpretations of Islam that discriminate against women violating their universal "human rights" laid out in the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), and promote reinterpretations of sharia compatible with such international human rights documents. They call for substantial reforms of sharia family laws and reformulations of gender and marriage in Islamic legal theory in order to enable contemporary Muslims "to attain the objectives of justice, equality and fairness that are central to Qur'anic principles, the social objectives of the Shari'ah (*maqasid al shari'ah*)" (Norani Othman 2005, 9). Like many other Muslim reformers, Norani Othman, one of the founders of SIS, deploys the notion *maqāṣid al-sharī'ah* in combination with other ideas circulating in early-twenty-first-century Western versions of modernity. Cara Wallis (2013, 68) reminds us that modernities are *about* gender. Unlike the dominant local version of modernity championed by UMNO and many Islamic NGOs, SIS rejects the traditional asymmetrical model of gender relations in favor of the western feminist construct of symmetrical gender relations.[7] SIS contends that this notion of "gender equality" is pursuant of the objectives of sharia.

Although the Malay women I spoke with in the PM's Department criticized the feminist worldview of SIS, they also told me that they engaged in dialogues with SIS on many legal matters pertaining to women. For instance, when I interviewed a group of female legal experts in the Department for Islamic Development Malaysia (JAKIM), Haryaty stated:

> Well, the first thing that we know is that Sisters in Islam is a feminist movement. So, basically, most of what they are fighting for is based on feminism. Yes, they do believe that some sharia laws discriminate against women but they actually aren't. And, the way we counter the Sisters in Islam is that sometimes we have a discussion and we do invite them, in terms of when we want to regulate some laws and we do have a discussion with them. But the pressure from the Sisters in Islam is not that the government is ignoring what they are fighting for, but the government has a plan and has looked into any law very deep, and we still hear opinion from them. They are basically a feminist movement and we hardly take a suggestion from them to insert into the sharia law.

Likewise, Dr. Zaleha binti Kamarudin, the deputy director of a government think tank, the Institute of Islamic Understanding Malaysia (IKIM),

informed me they often invited SIS to participate in their seminars. She noted that SIS' perspective is very different from the "traditionalist" perspective they take at IKIM "in which we take into account the problems of society where sharia is being implemented and try to make the society fit with the laws." Dr. Zaleha contrasted SIS' model of gender relations with the model she interprets to be based in sharia:

> We did have a discussion with them but they come from a different school of thought. That's the reason it is very difficult. We did invite them to a conference on human rights … They came out with a different idea … we came out with a different idea. It is difficult to reconcile. The man is still the head of the family by the fact that he is, I wouldn't say physically better, but physically able to protect the family otherwise you would be emasculating him. Uh, but if the woman is capable, she should sit together with the husband. So we talk about the concept of equality in the context of helping, assisting, together. It's not like the head, for example, the head for war is the general, but the general should be helped by all these people around him to make good decisions. And he cannot make good decisions without consultation, without the usage of *mushawarah* [discussion]. But Sisters in Islam look at this guy without consultation, that is why the issue of domestic violence comes in, so when we talk about the Muslim family, we talk about a family where the concept of *shūrā* [consultation] is widely practiced. The concept of *khalifah* [caliph], which is based on *amānah* [trust], is practiced. So when you just talk about the concept of *khalifah* without all these *necessary* things, there goes everything that is going to be wrong.

There has been considerable interaction and exchange between Sisters in Islam and federal government Islamic institutions and some other Islamic civil society organizations, such as JIM. Salime (2011, xx) defines the interactions between the feminist and political Islamic women's movement in Morocco as "interdependencies," which "refers to the entanglement of the … movements … and the ways they have constituted each other's discourses, politics, and forms of organization." Similarly, I interpret that there are interdependencies between SIS' feminist project and the UMNO-led sharia project in Malaysia. As Haryaty noted above, the federal government listens to the opinions of SIS and responds to their concerns about gender discrimination. Dr. Zaleha's discourse also indicates interdependence in the way she merges a gender perspective that is concerned about the fair treatment of women and their participation in decision-making *within* the traditional framework of asymmetrical

gender relations under male leadership. During one of my visits to the Shariah Court of the Federal Territory of Kuala Lumpur, a sharia judge enthusiastically informed me that they had recently appointed the first two women as sharia court judges.[8] Moreover, Norhafsah Hamid (2015) discusses some of the reforms the federal government made in sharia family laws in response to complaints from SIS, including changes in laws regulating polygamy, male pronouncements of divorce, and matrimonial property. On the other hand, Sisters in Islam has been actively engaging with religious texts and suggesting changes in the way sharia family laws are applied. For instance, in my separate interviews with Norani Othman and Zainah Anwar, they both worked within prevailing traditional sharia frameworks to argue for reform. Dr. Norani criticized the manner in which polygamy was practiced in many states, and Zainah problematized the discrepancies between the way the traditional theory of gender rights is supposed to work and the actual practice and experiences of women. Rather than becoming locked into oppositional binaries, these contrasting reformist and normative sharia projects entangle and partially constitute each other's discourses.

Similar to SIS, Anwar Ibrahim, the leader of PKR and the opposition coalition (*Pakatan Rakyat*), creatively interprets and applies the notion of *maqāṣid al-sharīʿah* to support his liberal democratic and pluralist model of *Ketuanan Rakyat* (People's sovereignty). In a PKR press release, Anwar stated:

> I believe that the *Maqasid al-Shariah* (the higher objectives of the Shariah) are important principles of governance and are not inconsistent with the precepts of democracy. In this regard, Pakatan Rakyat will remain guided by the principles of universal justice, good governance, accountability, transparency and competency in order to achieve public good for the people. (Anwar Ibrahim 2012)

He interprets that the *maqāṣid al-sharīʿah* are "principles of governance" directed toward achieving the *maṣlaḥa* or public good. This usage of the concept "higher objectives of sharia," like SIS' above, differs from Abū Ḥamid Muḥammad al-Ghazālī's (d. 1111) classic conception of a limited list of objectives: faith, life, intellect, lineage, and property. Egyptian scholar Yusuf al-Qaradawi, Anwar Ibrahim, and many other contemporary scholars of various religious and ideological orientations accept Taqī al-Dīn Ibn Taymiyyah's (d. 1328) revision of the *maqāṣid* to an open-

ended list of values (Kamali 2006, 116–119). Al-Qaradawi argues that certain elements of democracy are obligatory for Muslims, because they are the necessary means to the ends of sharia as derived from the revealed text (Feldman 2007, 112). In contrast, Anwar suggests that applying these principles of governance, derived from the revealed text and foreign sources, within a liberal democracy instantiates the ends of sharia.

Furthermore, Anwar Ibrahim's concept of universal justice envisions a transformation of UMNO's model of a nation in which Malay Muslims reign supreme. His idea of *Ketuanan Rakyat* projects a cosmopolitan image of the nation delinking any racial or religious supremacy from the state and extending equal citizenship rights to all Malaysians. It seeks to replace the special position of Malays and Islam with a secular pluralist political system. Unlike most other political parties, PKR is composed of multiracial and multireligious members though under Malay leadership. It holds a tenuous position between a democratic socialist, primarily Chinese DAP (Democratic Action Party) and the political Islamic party, PAS, in the opposition coalition. Anwar Ibrahim's background as a Muslim youth activist, former deputy PM, and his present commitment to moving the political system away from the electoral authoritarian UMNO-led ruling coalition government toward a liberal–democratic vision facilitates his role as a mediating force holding the two divergent opposition parties together (see Allers 2013). However, his version of "religious secularity"—combining broad Islamic principles, aims, and objectives with pluralism, liberal democracy, and a vision of inclusive nation building—is seriously challenged by the growing thrust for Malay and Muslim forces to unite to preserve and solidify their position of domination.

Sisters in Islam and the Anwar Ibrahim-led PKR find strong agreement for their ideas of limiting the extent of state implementation of sharia laws, pluralism, and secularism, with the DAP and non-Muslim liberal rights organizations. As Asad (1986, 105) argues, it is important for an anthropologist of Islam to be concerned with the roles Muslims *and* non-Muslims play in dynamic processes of power. Although these non-Muslim NGOs are not speaking from within the Islamic discursive tradition, their sociopolitical projects interact with proponents of various sharia projects. In Malaysia, where non-Muslims comprise around 35 percent of the population, their discourses about sharia play a significant role in politics. Lim Kit Siang and Karpal Singh, long-time veteran leaders of DAP, have consistently expressed opposition to PAS' campaigns for an Islamic state

and more extensive implementation of Islam law. In 1990, Karpal Singh notoriously declared that there would only be "an Islamic state over my dead body." DAP's democratic socialist ideology entails a vision of a secular Malaysia in which civil rather than religious laws would be paramount. They feel that the Malaysian Muslim drive for a greater standing and scope for sharia deviates from the intent and nature of the original 1957 Federal Constitution. In my interview with Dr. Ramasamy, a deputy chief minister of the DAP-led state government of Penang, he stated:

> So the party [DAP], we talk about secular Malaysia, a Malaysia for Malaysians. We don't subscribe to the *ḥudūd* law or the Islamic state. Because we still believe that the Constitution is fundamentally a secular constitution. Islam is our official religion, and the practice of other religions is allowed in this country. So, even though PAS is in this coalition, but we oppose the implementation of *ḥudūd* law based on the sharia. So we are not going to agree on that. There is no question of us compromising on that … See *Barisan Nasional* plays also the Islamic game. On the one hand, they say we are open but then at the same time … if I am a Muslim … see I want to leave Islam, now I have to go to the Shariah Court. And we feel that non-Muslims have been told to go to the Shariah Court. For example, there is the case of a family where the father converted the children. Then the mother took up this case and then they said okay for that you have to go to the Shariah Court. Why would she have to go to the Shariah Court? The Shariah Court only applies to the Muslims. These are some of the areas in which we are not very happy … Then there was the case of someone who was converted at the age of seven. How can you convert someone at the age of seven? Again, it is not constitutional. Then the Civil Court says you have to go to the Shariah Court. I mean do you expect justice at the Sharia Court?

Although Dr. Ramasamy noted that Karpal Singh's declaration was rather harsh in its opposition to *ḥudūd* and the Islamic state, he felt that it was the correct position and is DAP's position. Their perspective is that the recognition of "Islam as the religion of the federation" in the Constitution was intended, and should remain, within a secular format. They view the numerous cases of non-Muslims being sent to sharia courts when their spouses convert to Islam and subsequently convert their children to be contravening the secularism embedded in the Federal Constitution.

Secular NGOs, such as SUARAM (*Suara Rakyat Malaysia*, Malaysian People's Voice) and ALIRAN (*Aliran Kesedaran Negara*, National Consciousness Movement), actively advocate for liberal rights that are

often at odds with current government policies and the views of Muslim activists. Like DAP, these liberal rights NGOs want to see greater secularization of Malaysian society and oppose any rise in the jurisdiction of sharia courts. Anil Netto, an Indian intellectual in Aliran, wrote:

> In 1988, the administration of then Prime Minister Tun Dr Mahathir Mohamad introduced controversial constitutional amendments to include Article 121(1A), which states that the civil courts (despite being federal level courts) shall have no jurisdiction in respect of any matter within the jurisdiction of the *Syariah* Courts (state-level Islamic courts that have jurisdiction over Muslims in specific personal law matters). Since then, a crisis has emerged because of a conflict of laws and what appears to be a lack of clarity regarding the jurisdictions between the civil and Islamic systems … it does not address the predicament of citizens who have changed their religion and no longer consider themselves Muslim; or that of non-Muslim married couples who later find that one of the partners is converting to Islam. (2007, 100)

In concert with SIS and intellectuals in their network, Aliran advocates for a secular and neutral state that would extend equal rights to all citizens of the nation-state and not adopt policies slanted toward the laws and ethical norms of any religious group including the Muslim majority. They consider the slight tweaking of the jurisdiction of the sharia courts under Tun Mahathir Mohamad as a move away from the proper elevation of the civil courts in the original 1957 Federal Constitution. Moreover, there remained conflicting areas in which both civil and sharia courts had jurisdiction, notably in relation to matters involving Muslim and non-Muslim parties.

Liberal rights NGOs' anti-sharia projects stress liberal secularism and what they view to be the violations of "human rights" under current implementations of Islamic laws. Tan Seng, a young activist I interviewed in the SUARAM office in Petaling Jaya, told me "freedom of religion is a fundamental human right for everyone and the state should not step into personal beliefs." They also argue for the elimination of sharia criminal laws and highlight the violations of the principles of liberal secularism and multiculturalism with the current string of controversial issues over sharia family laws. They argue these cases reflect Malay and Islamic hegemony that must be transformed into a more "cosmopolitan" multiculturalism. SUARAM issued an annual human rights report that criticized the impact of state implementation of sharia laws and ethical norms on the lives of

Muslims and non-Muslims. Their *Malaysia Human Rights Report 2009* stated:

> The codification of Islamic "norms", "values" and "morals" into state legislation imposes restrictions directly on Muslims and indirectly on non-Muslims. The Syariah criminal laws are enforced throughout the country and govern a wide sphere of the lives of Muslims. Muslims are subject to restrictions on "immorality" though prohibition of alcohol consumption, gambling, and *khalwat* [improper proximity with opposite sex] … As in the previous year, 2009 saw numerous manifestations of Malay-Muslim groups who propagate the supremacy of Islam and Syariah laws over other religions and laws in the country and those who promote freedom of religion and equality among religions. (SUARAM 2009, 119–127)

These non-Muslim NGOs, embracing the dominant global culture of human rights with its emphasis on secular notions of the individual and personal freedom from state-enforced moral codes, interpret state enforcement of Islamic ethical norms and the special position of Islam as violations of human rights. Thus, these organizations are major nodes for the circulation of hegemonic global values of western modernity, including a supposedly neutral secular nation-state, privatization of religion, and liberal pluralism.

Given the numerous and highly publicized conversion, child custody, and apostasy cases as well as the *kalimat Allah* and "Inter-Faith Commission" controversies, there has been extensive interaction of liberal rights organizations and their supporters with the UMNO-led government and other proponents of sharia projects. However, this interaction has been more antagonistic and uncompromising than the interdependencies we noted between the Muslim feminist and the UMNO-led sharia projects. Rather than entangled and interpenetrating discourses, the debates between secular NGOs and Islamic agencies, parties, and organizations indicate rigid and hardening ideological positions. Tamir Moustafa (2013, 797) notes that "the liberal rights versus shariah binary [has] clearly exacerbated cleavages in Malaysia and, to some degree, shifted the principal cleavage from race to religion." In addition, he argues that intervention of outside agents and perceptions of "threats" to Islam or minority communities have contributed to both sides becoming further entrenched into oppositional stances. To some extent, these dueling binaries of liberal rights and normative sharia projects are hardening into diametrically opposed

fundamentalisms: secular and religious. The liberal rights camp holds fast to their convictions that the original 1957 Federal Constitution is secular and provides a blueprint for a secular Malaysia, the civil courts should have jurisdiction over the sharia courts, and the state must be neutral in terms of religion and race. On the other hand, the normative sharia project camp embraces their certainty that Malay natives and Islam enjoyed a special position in the Constitution and that as Malays or Muslims they are the rightful rulers of Malaysia who can refashion the legal structures to defend Islam and/or their race.

Conclusion

The cultural politics of religion, race, and nation in Malaysia are central to understanding sociopolitical dynamics, including the fissures in electoral coalitions. While PAS often finds its *Pakatan Rakyat* opposition coalition partners, DAP and PKR uniting with secular human rights NGOs and SIS in liberal rights campaigns, they often see PAS on the opposing side. In order to "defend Islam," PAS feels compelled to work together with UMNO, their chief political foe in the realm of electoral politics. The persistent stream of dramas of contention involving the opposing binaries of liberal rights versus sharia, pluralism versus special position of Islam and Malays, and secularism versus political Islam demonstrates the interplay of sharia and other sociopolitical projects. While the religious secularity sharia projects of SIS and PKR tend to coalesce with DAP and secular liberal rights organizations, normative sharia projects—including UMNO's secular nationalist, Malay rights, PAS' traditional Islamic, and Islamic NGOs *dakwah* projects—join together to uphold Malay and Muslim prerogatives and dominance. Moreover, when UMNO or PAS are perceived to be adopting public positions on dramas of contention that do not properly defend the special position of Malays and Islam, mediating Islamic civil society organizations pressure them to shift their position. As Tamir Moustafa (2013) astutely points out, campaigns for liberal rights tend to strengthen the motivation for Malay and Muslim unity. These challenges are often interpreted as threats to Islam and hegemonic images of the nation in which Malays and Muslims are located on top of social hierarchies.

The interdependence between SIS' feminist project and the UMNO-led sharia project contrasts with the antagonistic opposition between the liberal rights project and a broad range of normative sharia projects.

Muslim feminists make arguments for reform within prevailing social practices and government Islamic agencies incorporate a gender perspective into their normative Islamic model of gender relations. Interplay between these reformist and normative sharia projects also entails interaction between their versions of modernity. SIS' secular modernity, with its western feminist-style model of gender equality, has inflected UMNO's partially enchanted modernity with greater concern for the position and treatment of women. However, SIS' persistent alliance with secular liberal rights organizations has made them the target of a recent fatwa of the Selangor Fatwa Council that has declared that SIS has deviated from Islamic teachings due to their subscribing to liberalism and religious pluralism.[9] This suggests that while a challenge to the existing gender norms can be tolerated, a challenge to the underpinnings of the racial and religious hierarchy cannot.

The growing polarization of liberal rights and normative sharia projects has driven dominant Malay forces toward a pattern of increasing shariatization, a more enchanted modernity, and heightening emphasis on the Malay-preferred hierarchical image of the nation. Globally dominant versions of western modernity, promoted by SIS, PKR, DAP, and secular human rights organizations, are being eclipsed by the move toward a more enchanted modernity with expanded public space for normative Islam. Many recent developments indicate that the partially secular format long championed by UMNO is shifting toward greater sharia-tization. For instance, the PM's Department is reportedly formulating new federal policies on apostasy and a sharia court system that will be fully on par with the civil court system. In addition, the federal government and the PAS-led state government of Kelantan are currently deliberating a rollout of Islamic criminal laws, including *ḥudūd* and *qiṣāṣ* in the east coast state.[10] Furthermore, the long-term pairing of a Malay Muslim–dominated hierarchical image of the nation with a horizontal image of diverse and equal citizens (see Daniels 2005) is being delinked with heightened stress on a Malay Muslim–led polity.

On the other hand, if more interdependence between liberal rights and normative sharia projects were to develop, this would create new possibilities. To facilitate the emergence of new forms of citizenship and statecraft, hegemonic Malaysian Muslims must envision more space for minority and individual rights within their normative Islamic worldviews, and Malaysian secular humanist activists must be able to admit more linking of the state with Islam in their notions of secularism.

Notes

1. See Singh (2009) and Daniels (2013a) for analysis of Malaysia's 12th General Election of 2008 and Weiss (2013) and Case (2014) on Malaysia's 13th General Election of 2013.
2. The sixteenth-century Melaka legal code applied Hindu-Buddhist-influenced policies in areas of forced marriage and differential treatment of members of different social strata, while family laws, laws for religious worship, and several areas of criminal law indicated stronger sharia influence (Yusoff Hashim 1978). By the middle to late nineteenth century, Terengganu and Kelantan implemented criminal law enactments that were much more "clearly Islamic and in conformity with the *hukum syarak* (Islamic law)" and only applied customary principles that did not conflict with the principles of sharia (Abdullah Alwi Haji Hassan 1996, 5).
3. Md Asham bin Ahmad (2011), a senior IKIM fellow, argues that Muslims should derive the meaning for "moderation" or *wasaṭiyya* from an understanding of the Qur'anic phrase *ummat wasaṭ* which clearly describes the "middle position" of the Muslim community. Najib Burhani (2012) describes the Nahdlatul Ulama (NU) usage of this concept in contemporary Indonesia, which is more theological than the political usage in post-9/11 United States.
4. Keller and Lehman (1991) argue that two Polynesian metaphysical concepts, *hkano* (material essence) and *ata* (efficacious image), are embedded in larger theories of a domain of knowledge.
5. I use pseudonyms for my interlocutors unless they are well-known public figures.
6. Federal Constitution Article 11(1) states that "Every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it." Article 11(4), the caveat to this provision, clarifies that "State law and in respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam." Several states have issued such enactments specifying restrictions on the propagation of non-Islamic religions to Muslims.
7. Aihwa Ong (1989, 1990) argued that Malay women enjoyed relatively high status vis-à-vis men due to customary emphasis on gender complementarity and bilateral kinship principles. Describing

the context when the UMNO-led secular state launched its own "Islamization campaign" amidst rising *dakwah* movements in the 1980s, Ong contends "the consequence of this struggle of capitalist state versus Islamic *umma* has been an intensification of gender inequality in Malay society" (1990, 272). Nevertheless, several kinship studies conducted prior to the Islamic resurgence indicate that the cultural model of asymmetrical gender relations embraced by the UMNO-led state and Islamic NGOs was long rooted in Malay society (Djamour 1959; Firth 1946; Banks 1983). Based primarily on fieldwork conducted in the late 1960s, Banks explains the presence of both a male-slanted gender hierarchy and the "great freedom of Malay women" by noting that "Malays simply do not see religious law as a coercive instrument, but as a tool for the understanding of the social and natural world and as a guide to the creation of a viable social order. Freedom in certain spheres does not imply equality before the law in all others, nor do unequal laws imply coercive interpretations" (1983, 67).

8. Sylva Frisk (2009) suggests that an increase in female religiosity has opened up spaces for women to create more authority for themselves in Malaysia. She argues "that women, through the Islamic discourse on piety, are able to negotiate and transform gender relations and actively shape their lives in correspondence to ideals found in orthodox Islam" (2009, 23).
9. SIS has filed for a judicial review of this religious edict that was entered into a gazette on July 31, 2014 (*Malay Mail Online* November 6, 2014).
10. In June 2015, the PAS congress approved a motion to sever ties with DAP after this secular political party cut ties with PAS' president Abdul Hadi Awang over the push to implement *ḥudūd* in Kelantan (*Today* June 11, 2015).

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PART III

Sharia and Gender

CHAPTER 7

Gendered Accounts of Expertise Within Islamic Finance and Financialization in Malaysia

Laura Elder

Introduction

Following recent theoretical moves within anthropology, I am interested in examining Islam as a discursive tradition and seek to examine ways of knowing and being as embedded in chains of human interpretation which both sit within and bridge across social contexts. In this formulation, Islam is positioned not as a universal category but rather as a culturally specific nexus of interpretations which may scale across time and space depending upon the building of interpretive chains or networks between contexts (Asad 1993; Bowen 2012; Mahmood 2005; Moumtaz 2015). The reflexivity embedded in this understanding of Islam—namely that scripture is not distinct from and in opposition to practice, but rather, it informs and authorizes practice, which then informs interpretations of scripture (Asad 2006, 256)—is parallel to the reflexivity between economics as a scriptural set of theories which are then embedded in practice. This view of economics was articulated by scholars of economics and finance

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as cultural processes (Callon 1998; MacKenzie 2008) and by a scholar of both Islam and economics as cultural processes (Mitchell 2002, 2005, 2009). For example, D. Mackenzie and Y. Milo have shown that the success of options pricing theory across markets was due not to the "discovery" of preexisting price patterns, but rather to how market sociality was altered to bring performance in line with the predictions of the theory (2003). Here, I am interested in looking at the intersection of these two discursive traditions in the theory and practice of Islamic finance.

Viewed by its proponents as the leading edge of alternative, ethical investment practice, Islamic finance—generally defined as the provision of financial instruments designed to fit within a framework of Islamic-defined or Sharia-defined, interest-free investment—is one of the fastest growing segments of the global financial services industry (Clement M. Henry and Wilson 2004; Shanmugam and Zahari 2009; Zawya State of the Global Islamic Economy Report Team 2014). Among the most notable features of this market are the increasing competition between the Gulf Cooperation Council and Southeast Asian regimes and the role that Malaysian women are playing in interpreting sharia compliance and creating new products (Bahry 2005; Metcalfe 2011; Pollard and Samers 2013; Rethel 2010). By way of contrast, in other regional financial centers, the Islamic finance industry is a predominantly male industry (Pike and Pollard 2010). Most crucially, Malaysia contrasts with the norms of international finance globally, where women represent a small minority in industry and global financial governance institutions (Fisher 2012; Ho 2009; Zaloom 2006). By tracing the gendering of these markets, I seek to assess Malaysia's competitive efforts to accumulate material and social capital as a global provider and arbiter of what counts as Islamic finance.

But while many scholars have documented an ongoing co-optation of religion, particularly in Asia, by nation-states wherein Islamic practice is reconfigured according to market-based, calculative rationality (El-Gamal 2006; Fang 2014; Hefner 2010; Rudnyckyj 2010), I am interested in examining the intersections of these discursive traditions from the analytical viewpoint of gender. In core countries, multiple anthropologists have documented the gendered division of labor within financial markets; for example, they have documented destructive effects as aggressive masculinity is constituted as competence during the workday and as sexualized play during off-hours on the Wall Street (Fisher 2012; Ho 2009; Zaloom 2006). Feminist scholars have also shown how the accumulation of capital rests on systems of social reproduction and, further, how our current

round of globalization is marked by primitive accumulation—accumulation via fraud, predation, and violence—that is fundamentally gendered, with different consequences for men and women (Davidson 2010; Enloe 2013; Pearson 2011; Pollard 2012).

The emergence of a transnational sharia elite has been tied to globalization of Islamic financial services firms and the interests of "conventional" financial services firms in offering Islamic financial services. Geographers have argued that Gulf Cooperation Council regional centers hold significant power as networking hubs due to the strength of interlocking sharia boards within the region and between the region and traditional financial centers (New York and London) (Bassens et al. 2012, 95–97). In contrast, Kuala Lumpur–based firms have significant interlocking with the Gulf region and with London but no direct linkages with New York. Dubai, Manama, Kuala Lumpur (and increasingly London) are also crucial educational hubs for training in Islamic finance and also for the circulation of expertise (Bassens et al. 2012). However, while Malaysians have been crucial actors and their expertise has been imported in the MENA region, for example, "most of Dubai's scholars are Malaysians (Bassens et al. 2012, 346)," Malaysian women's expertise is almost completely unrepresented in these transnational linkages. A senior researcher at a government-sponsored Islamic finance research institution and Shariah Committee (SC) member at a large local bank reflected on this absence noting,

> I just came back from a roundtable discussion [on Islamic Finance] at Durham at the end of March and the only women there, except for myself, were student. Even in the West the role of women in Islamic finance is very minimal. Tan Sri Zeti [Governor of the Malaysian Central Bank] and Dato Sri Zarinah Anwar [former Chairwoman of the Securities Commission] these are the two super ladies and as far as the Islamic Financial Services Board there are no women other than Tan Sri Zeti.

Thus, in contrast to other domains where diverse models of interpretive authority and religious belief and practice dominate national configurations (Feener 2014), as Islamic financial services are globalized models of correct practice are whittled down by a core group of powerful experts. This is particularly important because the scaling up of expertise results in both significant profits and significant power.

In an industry survey, sharia scholars themselves pointed to the "overconcentration" of "superstar" scholars on multiple corporate boards as

a significant risk to the industry. Sheikh Abdulla Saoud Al Thani, the Qatar Central Bank governor and chairman of one of the industry's club-formation standard-setting bodies, the Islamic Financial Services Board, stated: "With the top 50 scholars in the boards of more than 70 % of Islamic financial institutions, it is clear that there is serious concentration risk of us being so heavily reliant on [these] scholars which needs to undergo some review" (Islamic Finance News 2013, 3). None of these top 50 scholars is female and their exclusion from these "club formations" means that women may not be able to achieve the same power and profits (Eden and Hampson 1998). Indeed, a significant aspect of scale is the power forge agendas—to carve new channels for interpretation and thereby set rules and standards and to carve new channels for profits by innovating new products (Strange 2002, 2004).

Below, I am also interested in how "conventional" financialization (the increasing dominance of financial activities over productive activities within the global economy) intersects with the burgeoning market for Islamic finance. Traditional genealogies of Islamic finance view it as an attempt to reassert social control within capital markets by seeking to reregulate in favor of the productive use capital (by mooring financial capital to productive use through a prohibition of interest) and transparency (by limiting uncertainty and promoting the equitable sharing of risks). On the other hand, adding complexity, Islamic financial markets are also entangled in global capital market structures and regimes of accumulation. For example, Bill Maurer has traced the intermingling of Islamic mortgage products with those of conventional mortgage products through pooling of these contracts in derivative markets in the US (Maurer 2006). And, among consumers, others have shown how consumers rely on expert interpretations (rather than their own interpretations) of proper Islamic products and often purchase conventional and Islamic products in tandem (Maurer 2005, 2006; Henry and Wilson 2004). Here, I show how specifically Islamic financial expertise is construed and constrained in gendered terms as the processes of financialization and Islamization merge within nation-states, in this case Malaysia.

Methodology

The arguments below are based on six months of ethnographic fieldwork carried out in Kuala Lumpur, Malaysia, and in Doha, Qatar, during 2013 and 2014. During this fieldwork, I interviewed analysts, lawyers,

regulators, and Shariah advisors in Islamic finance in each country. I also carried out participant observation at training sessions for Islamic finance professionals and at local investor forums. In these observations, I tracked interactions regarding sharia interpretive methodologies as reflexively constituted in interactions between scholars and financial practitioners; for example, I tracked how gender and hierarchy frame discussions, and, as participants self-segregate according to gender, the different avenues for formal and informal interaction that are created during lectures, questions, and networking. In both countries, using snowballing sampling I conducted in-depth interviews with Shariah Advisors and scholars.

In the case of Malaysia, I interviewed between one and three members of Shariah Committees for all but 2 of the 16 Islamic banks licensed by Bank Negara, the central bank of Malaysia. In addition, I conducted multiple in-depth interviews with three members of the Shariah Advisory Council (SAC) (the central regulatory authority). These semi-structured interviews focused on scholars' understanding of the purpose (*maqāṣid*) of sharia expertise as operationalized in *ṣukūk* (Islamic bonds) and other structured products, on their own process of reasoning in coming to specific rulings on product compliance, and on their own normative frameworks for construing expertise within Islamic finance. I also asked interviewees to explain the dynamics of authority on Shariah Committees and their own goals with respect to their own careers and promoting Islamic finance. I supplemented these interviews with a snowballing sample of 18 out of the 51 Shariah Advisors authorized by the Securities Commission.

Malaysia was chosen as a site of analysis because the governing coalition has promoted Islamic finance as a leading development initiative while, at the same time, promoting a model diametrically opposed to other models of Islamic financial markets. The Gulf model for Islamic financial market development, for example, is mostly unregulated with variegated thickets of rulings and exceptions in relation to sharia legal frameworks. In contrast, the Malaysian model of Islamic finance is centralized and standardized with a singular authority in the form of the Central Banks' Shariah Advisory Council (SAC). I argue that the ongoing international standardization in Islamic finance—under the auspices of institutions situated either within Gulf Cooperation Council countries or within core countries such as the US and the UK—is of crucial interest. Whose expertise will be promoted as part of this internationalization? Will Malaysian women's sharia expertise, networks, or practices be incorporated or marginalized?

Islamization in Malaysia

After the Asian financial crisis of 1997–98, then Prime Minister Mahathir Mohamad utilized the crisis as an opportunity to renationalize, consolidate and then reprivatize almost the entirety of the financial sector (Gomez and Jomo 1999; Gomez 2004; Gomez and Saravanamuttu 2012; Kaehler 2009). In the process of consolidation, he incubated Islamic finance as the new frame for competition on global markets—as a means of tapping into new circuits (see, e.g. Securities Commission 2001; Bank Negara Malaysia 2011). At the same time, the incubation of Islamic finance was also a means of promoting a racial formation based on the conflation of Islam and Malay ethnicity and the preferential treatment for Islamic/Malay knowledge and networks within Malaysia—specifically vis-à-vis Chinese-Malaysian ethnic networks (Omi and Winant 1994; Gomez and Jomo 1999; Gomez and Saravanamuttu 2012). Indeed, this was but one of the policy decisions aimed at bringing Islam into the state and into business (Khoo 1995; Gomez and Jomo 1999; Peletz 2013; Sloane-White 2011). As part of this Islamization of the state, PM Mahathir fostered a centralized top-down framework (with power stemming from the PM's office very similar to the sweeping up of power within the office of the Prime Minister post 9/11) with standards set by the Shariah Advisory Council's of both Bank Negara (the central bank) and the Securities Commission (Bank Negara Malaysia 2010).

Islamization of the nation-state enabled government-run investment vehicles to accumulate economic and cultural capital in the form of rising global recognition of Malaysian expertise within Islamic finance (Zawya State of the Global Islamic Economy Report Team 2014). And, further, rather than promoting an alternative, ethical investment framework, in this case, Islamic finance as promoted by the nation-state promoted stratification and inequality within Malaysia's racial formation (Gomez and Jomo 1999; Gomez and Saravanamuttu 2012). That is, rather than fostering "fairness, transparency, risk sharing, and prohibition of excesses and speculation" as the Malaysian Central Bank would have it (Bank Negara Malaysia 2011, 104), Islamic finance in Malaysia may increase inequality by facilitating the transferring of risk to marginalized groups within the population. Within this reorientation, however, the Malaysian state promoted women's financial expertise as particularly Islamic expertise. While Malaysia has faced marginalization within core country and global state economic governance institutions, Islamic finance was thus seen as a provisional space of political transformation (Rudnyckyj 2014) (Fig. 7.1).

Fig. 7.1 Bank Islam, Malaysia. *Photo*: Laura Elder

Homework: Family, State, and Nation

On the one hand, in Malaysia, the promotion of Islamic finance offers women a "back door" to significant power—for example, women were interpreting sharia law on multinational banks' Shariah Committees and on the Central Bank's authoritative Shariah Advisory Council a full decade before there was mention of appointment of women to the bench in sharia courts. Malaysia has a plural legal system based on both English Common Law and Shāfi'i sharia law which applies only to Muslims—the "harmonization" of sharia law and civil business law is ongoing but at this point (as we shall see below) cases involving Islamic finance are adjudicated in civil courts where questions of sharia are sent out to outside experts. However, in contrast to national trends in the gender division of labor wherein women represent the majority of college students and a

large portion of business professionals, in the growing industry of Islamic finance, both the Shariah Advisory Council at the national level and the Shariah Committees at individual banks are predominantly male. Indeed, women were only included on Shariah Committees beginning in the new millennium and they remain a very small minority of ten percent. And, at the regulatory level, there are only three female Shariah Advisory Council members at the Bank Negara Malaysia and the Securities Commission.

I talked at length with two of the women on the Shariah Advisory Council. Both of them stated that they felt no gender discrimination in carrying out their work and hence there is no need for particular initiatives to promote women's sharia expertise. Dr. Asmah,[1] for example, stated that she has consistently felt that all opinions and arguments are given equal weight in deliberations (rulings are usually consensus rulings) and that she has never felt "any negative division or experience being a woman in the finance industry."

Dr. Asmah is one of the female pioneers in the industry in Malaysia and she attributes her success to the educational system in Malaysia. She stated that education officials are "looking for a [gender] balance in the classroom." Because the Minister of Education has always been a Malay-only appointment, it is worth noting that this statement refers specifically to Malay education (Gomez and Saravanamuttu 2012). Further, she said "In primary school the majority of teachers are women and therefore men don't have a role model [and therefore might not succeed at the same rates as their female peers] and further, female teachers might evaluate students [in a gendered manner], evaluations would be skewed toward favoring female students and therefore we find more women taking over in university training." Indeed, one of her students, we'll call her Dr. Siti, credited Dr. Asmah both with stimulating her interest in Islamic finance and with recommending her for a position on the Shariah Committee (SC) of the Malaysian subsidiary of a large multinational bank. Dr. Siti also credits the Malaysian education system for the success of women in finance in Malaysia, saying that there was "no barrier between men and women … we are together in our training" and this leads to an equalization of academic and subsequent career success. In contrast to Dr. Asmah, her early training was in Islamic schools. Because her husband is an international consultant in the petroleum industry and usually stationed in the Persian Gulf, she has also raised five children virtually single-handed. While Siti credited Asmah with being her mentor and she mentioned other women who were part of "Dr. Asmah's group," she saw both the mentoring

and the networked group as a gender-neutral endeavor. Unsurprisingly for both women, the Islamic aspect of Islamic finance, which they both framed in relation to accountability, stability, and justice, was more imperative than anything to do with gender.

On the other hand, however, an interesting contradiction emerged when Dr. Siti spoke about work and gender in relation to the Islamic finance industry in particular, "But Islamic Finance is male dominated and requires long hours of work as well as lots of travelling—bankers time—it is really hard to balance career and family. But I am just an Advisor and so face less pressure and as well I have domestic help and I have help from family and grandmothers […] but also it is getting more expensive for maids." This is consistent with rhetoric across the industry and transnationally between Qatar and Malaysia: when women, rather than men, carry out the interpretive work of creating, packaging, marketing, and regulating Islamic financial products, their work is explicitly framed as subordinate to their reproductive work in the home. Furthermore, the home is ideologically freighted as the moral center of modern, middle-class Muslim nationalism (Chin 1998; Fischer 2008; Sloane-White 2011; Tong and Turner 2008).

Both of these processes can be seen, for example, in an article for the International Shariah Research Academy for Islamic finance, aimed at industry professionals, Dr. Nurdianawati, an industry analyst and a Shariah Committee member, notes challenges facing women on Shariah Committees:

> The most important factor what should not be taken for granted is that all female SC members are also responsible to their families as wives and mothers, thus, they have to manage their time wisely to balance their demanding duties both at work and home … Indeed, their family is their first priority, if the advisory work becomes very tough and ends up demanding too much of their time and energy, to the extent that they have to choose between industry and family, the latter will most probably prevail, leaving the financial institution at a loss! (2012, 7)

In this case, the financial institution will be at a loss because they will lose this valuable expertise but nevertheless family and reproductive work is accepted as the paramount civic virtue. Similarly, a senior male manager at a large bank in Doha stated, "women are our best workers but we know they are only here for the short term." In reflecting on her teaching role

at one of the international Islamic universities in Kuala Lumpur, another Shariah Advisory Council member said, "In law classes two-thirds of students are women but when you get to postgraduate level women tend to specialize, looking for professions with flexible hours." Her experience in the education sector offers support for the claim that women are consciously shaping their aspirations to fit those professions which will enable them to have the flexibility needed to care for husbands, children, and elders. However, the majority of the women and men that I interviewed (all of whom worked in finance or in supporting fields) described a good balance between their work and other domains of their lives such as family and social obligations. Of those that felt that they had achieved a good balance, many attributed their "good" work and life balance to two factors: their extended kin support networks and their domestic workers. For example, one of the pioneers in the Islamic financial services industry in Malaysia who, in 2014, had recently retired stated:

> I never had a problem taking care of kids because in thirty years I have had three maids each of them stayed for about ten years. They come here to make money and then once they have built a house [in Indonesia] then they go back. Without maids I wouldn't have had the time to deliver a full day of work. The expectation for work here is a lot more than in the Western world—it's a good thing that we have such a small population of 28 million because everybody thinks globally [about global competitiveness] and here even the women have no choice.

Analysts have pointed to the significant role of state policies in smoothing work–life balance issues for Malay women, often at the expense of women in other class and ethnic groups. And as documented by multiple analyses, the Malaysian state has also been deeply involved in construing the Malay middle-class nuclear family as the ideal building block of a multiethnic polity of modern Malaysia (Thompson 2003; Nonini 1998, 2008; Ong 1990; Stivens 2006; Sloane-White 2008; Fischer 2008). Christine Chin, for example, analyzed national employment regulations specifying that only coreligionists could hire Muslim women, which, in Malaysia, is to say Indonesian women, as domestic servants. Because Indonesian domestic workers command a lower wage than Filipina domestic workers, through this legal restriction, the ruling coalition manufactured a subsidy for the Malay middle class and was able to claim that its policies were directly benefiting the majority of Malays. By requiring Chinese Malaysians to pay

a higher price for domestic service, the ruling coalition thereby instituted another unstated subsidy for Malays who could now more easily cross the boundary into middle-class modern nuclear family status (Chin 1998, 85–88).

Indeed, the Malaysian state's role in subsidizing domestic workers, marking status for the middle class, and enabling work-life balance for women, may indicate a larger historical shift—the shift from kinship groups as the primary means of structuring the division of labor to the nation-state as the primary structural force (Nader 2013, 82–98). The state's success in fostering elite women's ability to balance work and life can, however, also be seen as a change from a complementary, interdependent division of labor for men and women in agricultural production (with egalitarian relations built upon this division of labor) to one of dependence on the state (and hierarchical relations built on this division of labor) for nonelites during the switch to industrial production. As elsewhere, colonial officials sought to structure intensely gendered divisions of labor into kin, work, property, and many other domains (Harper 1999; Nader 2013, 82–98). More recently, the Malaysian state has increasingly focused on sharia enforcement in the domain of family life with the result that impermissible actions within sharia are increasingly viewed as crimes against the state (Zainah Anwar 1987; Tan Beng Hui 2012). While this blending of state and sharia is contested, elite Malay women are facing a double bind. On the one hand, their working lives are significantly supported by state policies, but on the other hand, they face increasing pressure to cultivate and uphold sharia in domains of both the household and work (Fischer 2008; Frisk 2009; Ong 1990). Currently, as elite Malay women seek to constitute their sharia expertise as mobile and valuable, they are also refashioning a version of gender complementarity which recognizes and values women's essential difference on the market.

Across sectors in financial services in Malaysia, women in particular pointed to the differences in their experience in Malaysia of relative success in work-life balance compared to the stressful imbalance in financial sectors in the United States. Many women referred to arguments put forward by Sheryl Sandberg, Chief Operating Officer of Facebook, Inc. and author of *Lean In*, a book that was widely read by women in financial services in Malaysia (2013). The women with whom I spoke construed Sandberg's argument to mean that women have a hard time getting to the top of the corporate ladder because of cultural expectations in the United States about the central importance of women's roles as mothers. These

cultural models of mothering, in turn, made it difficult to balance family and work. Indeed, some of the women with whom I spoke valorized a specifically Malaysian model. According to their interpretation of Malay tradition, women have always been expected to work outside the home after marriage but have also been supported in their roles both as mothers and as workers by extended family and state initiatives. Further, these women viewed their Malaysian model as a model to be emulated by both the "West" and the rest of the developing world. For example, in August 2014 during a long lunchtime conversation with three women in positions of significant power in Islamic finance (one Shariah Committee member, one lawyer, and one industry analyst all now working in Kuala Lumpur but all originally from the state of Kelantan on the east coast of the Malaysian peninsula), we were talking about the kind of advice that they give to their married daughters as they seek to balance work and family life in their professional jobs (in health care, education, and finance). All three women agreed on three principles: "keep a separate bank account from your husband, keep your job, and teach your sons to put their mother first." After they mentioned that this was the same advice that their mothers had given them, I mentioned that there seem to be more women from the East Coast working in Islamic finance. They agreed and I then asked if they see the Malay cultural context of the East Coast, as a reason there are more women from that region in Islamic finance. In response, a lawyer in the Islamic financial services industry explained her view:

> Yes, it's cultural. For example, when I used to travel on business to Pakistan for conferences in the 1980s and 1990s I went into a religious bookstore and the owner said I was the first woman to enter the store in one hundred years [they continued to talk and after she explained her work] … he then accused me of being a bad mother because I continued working after having kids. I am operating on the Malay model but he was only familiar with the Pakistani model.

These women all agreed that for Malay women, working outside the home while taking care of family at the same time is "traditional" Malay culture. Their arguments are performative as they are seeking to valorize their choices and frame their expertise in relation to the modern Malaysian division of labor and the international job market.

However, looking at the financial services industry in the Global North, cultural analysts have dismissed Sheryl Sandberg's argument that women

have not made it to the top because they have failed to "lean in." Rather, social scientists have argued that few women have been able to make it to the top in Wall Street and City of London's financial institutions because of power structures which discriminate—in hiring, in training both at university and within corporations, and in networking (Fisher 2012; Ho 2009; Zaloom 2006). And it is these power structures that lead, in turn, to unequal opportunity structures and thus to fewer women on top of the corporate ladder. According to these analysts, the cultural element (particularly in relation to expectations about mothering) is subsidiary to a globally gendered (and racialized) division of labor—the feminization of globalization—that disempowers women (McDowell 2014; Pollard 2012; Shepherd and Ferguson 2011). From this critical view, Sheryl Sandberg's book fits neatly into what anthropologist Melissa Fisher has termed "market feminism," a term for social movements which aim to promote women but do not address systems of power and thus do not render the labor market (or by extension financial markets) fairer.

Another aspect of elite Malay women's refashioning of a gender complementarity which recognizes and values women's essential difference on the market can be seen in the way that female Shariah Committee members returned repeatedly to a naturalized division of labor between male and female sharia experts: "women are more detail oriented"; "more meticulous"; and "this might be why they are recruited to SC" or "Maybe women are valued because they are *lebih cermat* (more careful) and can bear tedious work. Men are working on the big issues but not on the small, small things … men and women complete each other the global view and the small view and therefore the discussion is comprehensive." This naturalized division, an outgrowth of turn of the century revisionist Islamic debates regarding men's and women's essential differences, continues to be contested (Frisk 2009; Maznah Mohamad 2010a, b; Ong 1990; Peletz 1996; Tan Beng Hui 2012; Wazir-Jahan Begum Karim 1992). Currently, however, this representation of gendered differences provides a potent justification for elite and middle-class Malay women as they seek to successfully navigate the male-dominated world of commerce "without undermining their own status in the family and their own dignity as Muslims (Tong and Turner 2008, 48)."

Significantly, this naturalized division of labor is mirrored within sharia law by another division with a different and powerful set of effects. Sharia interpretations are very diverse, but commonly within sharia, *fiqh* is the subset of endeavor dealing with human actions. Within *fiqh*, those

elements concerning the relationship between an individual and Allah, or dealing with worship (*ʿibādāh*) are often considered fixed and not subject to interpretation, while those that fit within the domain of *muʿāmalāt* dealing with the relationship between people and other people are considered flexible. In Malaysia, within *muʿāmalāt*, spaces for interpreting personal status rulings and family law have been systematically curtailed over the past two decades (Norani Othman 2008; Tan Beng Hui 2012). This has been achieved partially by removing Malay custom as a basis for both adjudication and mediation in the courts despite historical variation in family law and inheritance practices (El-Azhary Sonbol 2009; Nik Noraini Nik Badli Shah 2012; Peletz 2002, 2009). The structural effects of marking these as distinct fields of interpretation are evident in the lack of interconnection between state-sponsored initiatives focusing on "women's empowerment" such as TalentCorp and feminist nongovernmental organizations (NGOs) such as Sisters in Islam (SIS) and the All Women's Action Society (AWAM) (see http://www.talentcorp.com.my/; http://www.sistersinislam.org.my/; and http://www.awam.org.my/). There are no interlocking boards (as seen among the transnational sharia elite above) and very limited networking between the members of state-sponsored initiatives and NGOs (Maznah Mohamad et al. 2006). For example, many of the sharia experts that I interviewed were active within TalentCorp but only one had any communication with the other organizations. While activists in Sisters in Islam argue that they also are returning to Malay culture and customary practice in their reinterpretations of sharia law (Moll 2009; Nik Noraini Nik Badli Shah 2012; Peletz 2013), the women and men whom I spoke with in Islamic finance did not find SIS's return to tradition compelling.[2] In my view, this is because, for both men and women, the conception of Malay "tradition" within Islamic finance has been framed through epistemological conceptions of Islam viewed through the prism of the nation-state which construes family law and commercial transactions as distinct domains and construes family law as fixed and unchanging. In concert with this epistemological divide, there has been an ongoing restriction of public spaces of dialogue that has also been enacted through "lawfare"—bringing lawsuits alleging defamation, apostasy, and other crimes against feminist organizations (Peletz 2013, 608) such as Sisters in Islam, as for example, in the ongoing court challenge against Sisters in Islam (Malaysiakini Editors 2014). This war by means of the courts siphons resources, time, and energy until individuals who challenge family law provisions run out of resources and withdraw their suits.

Many of the female scholars I interviewed explicitly stated that they chose to specialize in commercial transactions rather than family law because of the flexibility and room for interpretive innovations. In almost every interview that I carried out, sharia scholars carefully outlined this distinction between family law (as fixed) and commercial transactions (as flexible) within *muʿāmalāt*. Indeed, these distinctions are a formative aspect of training in Islamic law and jurisprudence in Malaysia (Mohamad Akram Laldin 2011). But distinctions are also generative, both within law and any other cultural domains. For example, scholars have shown how the distinction between social and the economic domains in orthodox economics is used to justify the primacy of economic (construed as masculine) over social (construed as feminine) domains (McDowell 2014; Pollard 2012; Rankin 2011; Shepherd and Ferguson 2011). In Malaysia, similarly the distinction between flexible commercial law and constricted family law occludes the multiplicity of impacts of financialization upon family life.

Because financialization entails the incursion of market forces and modes of calculation into the household, feminist scholars have argued that, globally, the household has become the central site of accumulation via dispossession (McDowell 2014; Pollard 2012; Rankin 2008, 2011). And in a context of rapid financialization enabling flexibility and maintaining fixity between any two domains entails risk. As we have seen in the recent global financial crisis, households cannot evade and trade risks but banking and other financial institutions can (Bryan et al. 2009; Pollard 2012). The risks for women in Malaysia can be seen, for example, in the disproportionate retrenchment of women across all sectors as a result of the financial crises of 1997–98 (Jomo and Lee 2001, 219). Currently, the effects of the global crisis in 2007 seem to indicate a similarly gendered increase in impoverishment and layoffs (Siong Hook Law and Hui Boon Tan 2009; Khoon and Mah-Hui 2010; Country Watch 2011). Maintaining the separation between fixed and relatively flexible interpretive realms within *muʿāmalāt* thus has the unintended consequence of reinforcing gender inequality for nonelites.

Content of Interpretations

In Malaysia, multiple Shariah Committee members stated that, even though there are few women on committees, there is no glass ceiling in Malaysia. One woman, for example, stated that she views "being born in

Malaysia as quite lucky because the decision making process in sharia is not viewed as a gender issue, Malaysians view *ijtihād* [interpretation] as both men and women's job." As another committee member explained, there is a recognized hierarchy in the sources to be used as well as the justifications for decision-making regarding the sharia compliance of products and processes:

> Prohibition of riba is of course fixed but most often [rules] in the Quran and the Hadith are just general principles especially when we are talking about transactions. Personal rituals like praying five times per day are fixed but commercial transactions [*muʿāmalāt*] are only generally outlined in the texts so it is up to scholars to interpret these general rules. First we go to the Quran and Hadith and then we turn to other scholars and to the *maqāṣid al-sharīʿa* [the objectives or purposes of sharia]. In *mushārakah* [partnership] type transactions, for example, the elements and requirements are explained so what we do with *ṣukūk mushārakah* [Islamic bonds issued based on partnerships or joint ventures] is to try to keep the spirit there except of course the implementation is different.

Recognizing that this accepted hierarchy of sources and justifications leaves wide latitude for interpretive innovation, another scholar, a 30-something young researcher at a government think tank in line to be the chairman of the Shariah Committee at large global bank, was particularly enthusiastic about explaining the interpretative process in relation to *Bai al inah* or sale and buyback-linked trades which replicate swap trades on derivatives markets. I would argue, however, that he characterizes the Malaysian position as singular because he is sitting in *the* position of authority as an expert in a think tank that he describes as

> doing the research for Bank Negara … we are like a think tank for them but we are also involved with the Securities Commission … in Malaysia *Bai al inah* is accepted because Shāfiʿi is the only *madhhab* [scholarly tradition] that allows sale and buy back, combination of two sales contracts, first by cash and second with markup. According to GCC, in substance this is backdoor to *riba*. But Malaysia allows it because of our different methodology in rulings … There is a hadith which says no to *inah* but Shāfiʿi argue that the chain of transmission is not strong when we study the narration of the hadith. Second, when we look at the validity of a contract we should be looking at the structure not the intention whereas the GCC reverses and looks at intention not structure. Within the Shāfiʿi school we argue we

> should look at a contract based not on substance but on form. GCC school looks at intention but you cannot know intention. We say that separate sales, provided that the two sales contracts have no inter-conditionality, then the contract is valid [in form].

This position, that the structure of contracts should be the paramount consideration rather than the intention of contracts, frames the Malaysian state's approach to Islamic finance as an industry, for example, regulators explained to me that they are asked to look at contract structure to the exclusion of other considerations.

The Chairwoman of another local bank's Shariah Committee argued further,

> *Bai al-inah* was particularly controversial at [this bank]. Within *mu'āmalāt* rulings are much more diverse but if we follow only the Shāfi'i school then only 1 in 10 products will be approved but within *mu'āmalāt* we can allow other *madhhab*'s views. Most of the products in Islamic finance are coming from minority views and this is the reason for the criticism from the GCC. We see *mu'āmalāt* as a wide and flexible area [while they do not] but in this community [it depends on context] it is suitable to practice *ijtihād* in this way.

> One of the most popular products, for example, in personal finance is the use of *Bai al-inah*. If we don't have this then people will opt for conventional finance [so that they can get a return on their money] or even loan sharks and the criminal underworld. Hence this product is very much needed [to go against] conventional finance or illegal activities. Hence it is justified on the basis of serving community needs which are different than those of the GCC. These are very rich countries where the need for personal financing is small and only one *madhhab* is accepted.

> But in using justification of *uruf* [custom] and *maṣlaḥah* [public interest] we must acknowledge that if circumstances change then we will disallow *Bai al-inah*. Bank Negara is doing this *ijtihād* as well. If they say no longer needed then we will have to change.

Her frame for interpretation includes both Bank Negara as the central authority but also the public interest lurking behind financial rulings and

regulations. However, the basis for community or public interest is the need to compete with conventional banks.

The same interpretive frames are used in Malaysia's singular approach to trading of derivatives within Islamic finance. By supporting an interpretation of Islamic finance authorizing trading of derivatives, the Malaysian state's moves open Islamic financial markets to regulatory arbitrage. Derivatives are a category of financial tools that allow traders to take positions based on their predictions regarding timing and volatility (rate of change). Traders using derivatives profit from change itself rather than from change in the value of an underlying asset, for example, change in a stock index rather than in the value of stocks themselves. These financial tools make it possible to separate the various risks associated with an asset from the asset itself. So, for example, government-linked corporations' *ṣukūk* (Islamic bond) offerings are now subject to hedging and speculation on secondary markets such as Bursa Malaysia's Suq Al-Sila.

In fact, the status of derivatives within Islamic finance—which are generally seen as forbidden in other regulatory regimes—has been fundamentally altered by moves made by the Malaysian state and regulatory agencies. Malaysian jurists associated with government-sponsored think tanks and regulatory agencies argue that the institutional advances of modern futures exchanges eliminate all excessive uncertainty (or *gharar*) from futures contracts (by specifying in standardized contracts the characteristics of objects of sale and the compensation options for various delivery options for future and short contracts). Indeed in the wake of the Asian Financial Crisis in the early 2000s, Malaysia put the entire force of its newly reliberalized economic policy behind this merging of neoliberalism—in the form of a strong version of the Efficient Market Hypothesis—with Islamic financial practice. This view of derivatives as inherently tending to decrease uncertainty in the market and therefore becoming legitimate sharia-authorized products remains, however, a minority view among scholars (El-Gamal 2006).

This construction of Islamic finance, however, sits comfortably within Malaysia's political economy. This is partly due to the division of labor within Islamic finance between bankers, lawyers, and jurists. This division of labor mirrors that of the financial regime globally, particularly in regard to self-regulation, proprietary models for evaluating risk, and regulatory arbitrage. For example, a member of the central regulatory authority for Islamic finance in Malaysia, the Shariah Advisory Committee of both the Securities Commission and the National Bank, was particularly excited

about her own interpretive innovations (*ijtihād*) surrounding *wa'ad* or promises. She argued that *wa'ad* can be used to structure forward transactions such as derivatives. Her argument hinges not only on an interpretation of forward promises in relation to market demands but also on a reinterpretation of fundamental issues within Islamic jurisprudence/hadith. She is arguing that some kinds of speculation may be prohibited and some allowed. Focusing on the issue of *gharar* [risk, uncertainty, or speculation], she stated,

> Of course we know that even a little *riba* [interest] is forbidden but *gharar* is different, some aspects are ok because unavoidable. If we can allow Islamic hedging instruments then we could come up with speculative parameters and can thus innovate Islamic hedging products. Right now there are no clear guidelines on speculation. We cannot avoid *gharar* totally because of the nature of life. If there is a range from small to huge, then there is room to interpret. For example, if you buy 5 apples at 10 RM. Is there any *gharar*? Yes because the shape and weight of each apple is different but we can accept these differences so therefore we can see that *gharar* is different from *riba*.

As she works for the same government-sponsored think tank as the individual above, we can see how market-driven reasoning is used within the interpretive apparatus of *ijtihād* within Islamic finance and harnessed by the state regulatory authority as Malaysia's brand.

Context of Interpretive Work

But in the case of Malaysia, this interpretive (*ijtihād*) power of sharia expertise is magnified by the concentration of power within the Shariah Advisory Council (SAC). For example, multiple SAC members mentioned the controversy surrounding the phasing in of new standards on sharia compliance for equities in the Islamic Financial Services Act of 2013. Within these standards, in addition to quantitative criteria regarding the percentage of a business that can be non-*halal*, there are also qualitative criteria for evaluating sharia compliance of equities. As one woman on the SAC explained to me these qualitative standards were first "mooted" in relation to Malaysian Airlines (MAS), the controversial national flagship carrier which has been losing money for almost a decade and has now been renationalized as a result of recent tragedies (Bradsher and Innis 2014; Reuters 2014; Tavernise et al. 2014). She pointed out,

> Their income is from air transport so this is certainly sharia compliant but all flights were serving liquor as part of the service. They are not making money from it (and now MAS says they are also stopping duty free sales of liquor) but *the perception* was that this is freely being served and you can see people drunk on board, therefore, initially MAS stocks were not certified as sharia compliant [by the SAC] because of this image [my emphasis].

But, she continued, they have now been certified as sharia compliant because of additional meetings, called by the SAC with MAS as a courtesy to this government-linked company. In these meetings, MAS management "gave a commitment to not serve liquor aggressively, rather to only serve based on requests. There were specific complaints *from SAC members* that stewardesses were offering them wine and Champagne even though they were wearing Muslim garb, so now they will only serve if it is requested [my emphasis]." In this case, we can see that "the perception" referred to is the subjective perception of members of the SAC who can delist a company based on their views. Delisting can have significant economic effects for companies, as institutional investors will "reweight" out of delisted stocks in order to continue their sharia-compliant funds. Indeed, publicly listed companies scramble to meet the criteria for sharia compliance in advance of every six-month review.

A second example, noted above, of the scale and scope of the power of the SAC was mentioned by a woman serving on the SAC of both the Securities Commission and Bank Negara. This SAC member was particularly excited about her own interpretive innovations (*ijtihād*) surrounding *wa'ad* or promises. She argued that *wa'ad* may be used to structure forward transactions such as derivatives:

> There is not yet a resolution [regarding *wa'ad*] in Malaysia but AAOIFI [the Accounting and Auditing Organization of Islamic Financial Institutions, one of the main regulatory bodies within Islamic finance] has said that this amounts to *'Aqd* (contract) but I do not agree with their justification. The distinction between promising to sell now [on-spot settlement or +3 days] and promising to sell at a time in the future … Why is one ok and not the other? The issue is the status of a bounded [binding] promise. Right now (*sekarang*) there is no obligation to deliver say a computer at a future date [referring to allowance of *wa'ad* in relation to commodities] so I cannot accept the argument that there is a difference (*berbeza*) between having to deliver [a forward contract] and promising to deliver. The issue is the different effects of *wa'ad* [promising] and 'aqd [contracts]. I have been think-

> ing about this and trying to fight on this since 2009 … So far most of the scholars in the GCC are saying that this is tantamount to *'aqd* but if we can approve [*wa'adan* and/or parallel *wa'ad*] then we can innovate a lot of products … I am the only one who is arguing from this position though … I think this will really benefit the industry. We need Islamic hedging products and cannot run away from this …

Her argument hinges not only on an interpretation of promises in relation to market demands but also on a reinterpretation of fundamental issues within hadith; she is arguing that some kinds of speculation may be prohibited and some allowed.

From these two examples—of women's roles in shaping the qualitative criteria for certification of equities and the use of *ijtihād* in favor of derivative structuring—we can see on the one hand the significant power, held by both women and men on the SAC, as the interpretive apparatus of *ijtihād* within Islamic finance is harnessed by the state regulatory apparatus toward market-driven paths of reasoning. There is, further, a constitutional issue that has yet to be resolved in the case of the SAC's newly minted power. In the case of Tan Sri Khaled v. Bank Islam Malaysia Berhad, now pending before the highest court, the constitutional issues are being contested regarding new regulations which require civil courts to refer sharia issues to the SAC and render the SAC's decisions binding on those same civil courts (Abdullah Apnizan and Hakimah Yaacob 2013). Depending on the outcome of this case, which is rumored to be close to out-of-court settlement, SAC members' power represents a fundamental overturning of the separation of sharia courts from civil courts as outlined in the constitution. Indeed, SAC members are the first sharia experts to have jurisdiction in civil courts in Malaysia.[3]

Another contextual aspect of the framing of women's interpretive expertise in Malaysia is geographical: almost all of the women who have been appointed to Shariah Committees on Banks are from the East Coast of Malaysia. This represents a partial shift, as East Coast elites have traditionally been excluded from the higher levels of power within UMNO and have also fostered an alternate paradigm of what community development should mean within Islamic finance (Daniels 2012; Farish Noor 2008). However, these women do not view themselves as representing the East Coast in the power centers in Kuala Lumpur nor have they consciously articulated a women's power network. Rather, they frame their rise in relation to meritocracy and the traditional strength of East Coast

"*pondok*" schools in Arabic training. For example, one woman on the SC of a large multinational bank explained that out of her whole elementary school class of 35 students, she was the only one who chose to go on to a religious school. She stated that she "took this decision by myself because I wanted to further my religious studies and also to learn Arabic." Her decision meant that she had to walk one hour each way to get to her school which was difficult, and despite her mother's encouragement to change schools, she persisted because, "I was already wearing hijab and in the 1980s I didn't think I would fit in at a secular school." This same woman explained that from a young age she always wanted to be a "modern *ustazah*, not traditional but rather bringing relation to bear on contemporary issues … not a common *ustazah* focusing on family law but rather a modern *ustazah* focusing on business law." Here, we can see how the gendering of Islamic financial knowledge and practice sustains variegated privileges of elites in gendered terms within national imaginaries.

When a senior researcher at a government-sponsored Islamic finance research institution and Shariah Committee member at a large local bank (referenced in the "Introduction" of this chapter) referred to the lack of women in finance globally, I asked her what it was like to be the only woman at the table at international conferences. She stated,

> It was quite strange to be among men but it is the same at [the bank] where I am the only woman on the Shariah Committee. I will say that at the roundtable discussion the men listened to the women and appreciated their opinions. Islamic economists, sharia scholars, and practitioners were all there together (the three stakeholders in the industry), all seeking to come to a meeting point about solutions for the industry to avoid misconceptions between sharia scholars (lenient) and Islamic economists (stricter) or at least these are the perceptions.

It is worth noting that she changed nouns (from singular woman to plural women) even though she was the only woman there. I think this signals her aspiration that more women will be participating in these discussions. Further, in relation to the second part of her statement about finding solutions, I suggest that it is meaningful that consumers are not considered stakeholders in the industry at these high-level international gatherings of experts. When consumers or consumer group representatives are left out of these conversations about risk sharing in banking and finance, it is indicative of the foregrounding of form over substance referred to above.

Conclusion

In the case of Malaysia, Michael Peletz has argued that Islamic law is a global assemblage—including aspects of Common Law and Sharia Law as well as blending conventional finance (Peletz 2013). Similarly, focusing on Egypt, Saba Mahmood has argued that the relationship between Islamist movements and secularism is one of "co-imbrication" (2005, 25). Building on these insights, I have argued here that this assemblage is constructed within national and international imaginaries that foster and also limit the mobility of women's expertise. Elsewhere, I have argued that discourses about women as meticulous workers (shunting them to back office accounting and legal roles), which are intertwined with discourses about women's primary work as mothering, operate in both the Gulf Cooperation Council (GCC) context and the Southeast Asian context—which are markedly different in other respects such as the structuring of products. Here, I have shown that within Malaysia, these discourses have the effect of damping the real and significant power of women's expertise as Shariah Advisors, even when (as we saw in the case of the female SAC member's arguments regarding *wa'ad* above) they are vocal in "fighting" for a particular interpretation of Islamic finance. In fact, the damping effect may operate to shape women's consideration of the proper modalities of discourse into more market-oriented channels. In such a case, this would mean a foreclosing of the productive possibilities of alterities of both gender and Islamic discourse in reshaping financial markets. If, as industry folks in Malaysia and the GCC claimed, women are perceived as constantly on the edge of choosing family over work, then a more market-oriented approach may act as a shield against others' constant reframing of their interpretive work as outside of or external to the market. At the same time, the domain of specifically financial sharia expertise, construed within Malaysia as a domain of both men's and women's expertise, is connected to other domains of social life such as family, kinship, and property, as for example, in the case of Tan Sri Khaled v. Bank Islam Malaysia Berhad referred to previously. Thus, there is the potential for Malay women's interpretation of "tradition," as gender complementarity, and interpretive traditions, valuing form over substance as above, to alter social relationships and configurations of power. Here, I have argued that this potential is limited by a dearth of networking between elite Malay women, as sharia experts, and other women's networks focused on issues of social justice and addressing class disparity.

If sharia interpretations are framed through a market orientation, this in turn leads to a foreclosing of the possibilities of alterity within Islamic finance as market power (in the shape of product innovation and certification) is outsourced to conventional finance (El-Gamal 2006). As we saw in the case of the *ijtihād* in relation to the status of *wa'ad* promises, conventional finance as the frame for market competition dictates part of the approach of the sharia experts. Although these products and approaches are often framed as community development, they are also market-based and market-driven. In such cases, community (which is so often referred to in the reasoning process) is often left out in practice. Jane Pollard has argued that the current trend of financialization is to exacerbate unevenness in class and gender dynamics. For this reason, she argues that if the goal is decreasing inequality, then what is needed are spaces wherein the definition of financial risk can be politically contested and reformed (Pollard 2012). In the case of Islamic finance and financialization at large, the spaces both local (within Malaysia) and transnational (in the emergent governance structure for Islamic finance) where contestation is possible are shrinking. As a result of this squeeze, women's expertise remains constrained even while new elites are achieving considerable gains in power and prestige.

Karen Ho has pointed to a continuing problem wherein scholars of financial markets risk replicating the powerful discourses of totality that elites in capital markets strategically and reflexively promote (2005). Here, I have argued that bringing both Islam and conventional or "orthodox' Economics into view by focusing on financialization enables us to examine the ways that norms are "performed, inhabited, and experienced (Mahmood 2005, 22)." As Jane Pollard and Michael Samers have argued, financialization has the power to "exacerbate unevenness across individuals, social groups, and organizations in space and place (34)." Historically, governments have continually demarcated markets as bounded moral spaces, embedded in specific cultural, geographic, and political zones of difference. Capital market makers, however, are continually moving to cross these zones—creating relationships between moral spaces. Indeed, this is the nature of arbitrage—seeking to profit from exploiting discrepancies between market spaces. Islamic finance has historically been construed as a framework for market morality, and in particular, an ethical basis for exchange in capital markets. Islamic finance, however, confronts the same historical dilemma—how to deal with regulatory arbitrage and regulatory capture. Within this frame, Malaysian women work to interpret sharia

compliance within a national framework but also seek to render their expertise legible as they engage financial regimes and systems of standardization. As the work of these "modern *uztazah*" is intertwined with financialization, their own legitimacy as financial and sharia experts is reinforced but also differentiated from international expertise—they are not moving in the terrain of "sharia superstars." At the same time, their success (and the success of Islamic finance more generally) in maintaining gendered distinctions between family and commercial spaces curbs public contestation of financialization. While this case study is limited to Malaysia, I contend that as the processes of financialization and Islamization merge within national spaces, Islamic financial expertise will be more broadly construed and constrained in gendered terms globally.

Notes

1. I refer to all informants by pseudonyms unless they have asked to be identified.
2. It is worth noting that Dato Sri Zarinah Anwar, former Chairwoman of the Securities Commission (referred to in the statements of many of my interlocutors), is the sister of one of the founders of Sisters in Islam, Zainah Anwar. Their relationship, however, was neither commented on nor built out in any networking between groups within Islamic finance and Sisters in Islam.
3. Patricia Sloane-White alerted me to the constitutional issues surrounding the SAC's authority. On the ongoing case, see (Editors 2014). Information on the ongoing case is from personal communication with two local law firms and two Shariah Advisors who are connected to the case.

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CHAPTER 8

The Difficulty of Accounting for Women Who Critique Sharia in Northern Nigeria

Sarah Eltantawi

Beginning in November of 1999, Northern Nigerians in 12 northern states took to the streets to demand that their states adopt the strictest and most uncompromising version of Islamic law. Tired of living in a failing state, Northern Nigerians sold their belongings and scooped up their children to visit states implementing sharia to partake in lively celebrations. While sharia is God's law, one so transcendent that human beings will never really understand it; fiqh, or Islamic law, consists of human being's humble attempts to try. I believe that Northern Nigerians—who I lived with for several months in 2010—wanted idealized sharia, a methodology that would produce God's perfect plan, specifically in Northern Nigeria's context, an end to poverty and corruption and the renewal of Nigerian morality in all spheres from government to business dealings to within the dynamics of a family. What they got was a reductionist version of fiqh that was introduced virtually overnight, with all of the flaws that it entails. For

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our purposes, in this piece, I will refer to the 1999 Nigerian revolution for Islamic law as "sharia," because that is what most Nigerians call it.

I have written a book about sharia reimplementation in Northern Nigeria, narrated through the lens of the trial of Amina Lawal, a peasant woman from Katsina state, Northern Nigeria, who was sentenced to death by stoning in 2002 for committing the crime of *zinā*, or illegal sexual activity two years after sharia was implemented. I was prompted to take up this topic because of the massive Western reaction to Lawal's case. Amnesty International generated three million letters to the President of Nigeria to stay the execution (Lawal had yet to undergo her appeals), President Clinton personally called for Lawal's release, and an episode of the Oprah Winfrey show was dedicated to raising awareness about the stoning punishment. Important nuances were lost in these calls, however; among them that Nigeria's then-president Olusegon Obasanjo had no power to stay Lawal's execution, while he, as the nation's first elected Christian president, opposed sharia existentially. There was a general ignorance about how Nigerian politics worked. The political calculus born of Nigerian modern history would be much more difficult to navigate than many Western institutions assumed.

Edward Said's 1978 classic critique of Western scholarship of the Middle East, Orientalism, the Iranian Revolution of 1978–1979, the 1991 Iraq War, the September 11, 2001 terrorist attacks in the United States, and the Second Iraq War of 2003, in addition to a rise in Islamophobia, has deeply and understandably affected the analytic frames within which scholars of the Middle East and Islamic world view the region and their subjects of inquiry. Much Western scholarship aims to understand the motivations behind the late-twentieth-century sharia revolutions in Nigeria according to the stated reasons of the majority of Nigerians, rarely probing deeper by living among them and understanding their societies contradictions. In particular, it is important to understand what must be performed to maintain proper public behavior and what might go therefore unsaid. Another common Western scholarly inquiry critiques the Orientalist approach to sharia. I contend here, however, that an important category of the—in this case—Nigerian subject is left traditionally underanalyzed—"indigenous" Muslim women who express concerns about Islamic law. I believe this paucity of research on indigenous Muslims that oppose sharia extends further than Nigeria, a neglect that marks the constraints of our current Western academy more than conditions on the ground in the Muslim-majority world.

Gauging Northern Nigerian women's "true" opinions about the sharia revolution is a delicate matter for a researcher. In the Northern Nigeria I lived in in 2010, the only public activism that was acceptable, particularly for women, had to be presented from within an Islamic framework. For example, instead of saying women want the right to pursue their education without restriction, it is necessary to say that Islam allows women to pursue their education without restriction. If the women I spoke to in Nigeria objected in any way to the sharia legal system and culture that was being tried in their country, they accused the men in charge of the sharia system of bad interpretations, or of politicizing sharia. In fact, the term "political sharia" was invented by disaffected Nigerians to characterize behavior that was out of step with their ideal.

I concentrate in this essay on how Nigerian women's voices have been excluded in the debate about sharia both in Nigeria and in much of the Western discourse about the Northern Nigerian sharia revolution. The 1999 sharia experiment in Northern Nigeria is masculinist, meaning that it was conceived of and led by men, empowering a conception of sharia that imposed ultimate order over Nigeria's current rulers—a way of leveling the political playing field to one that was mano-o-mano. In this sharia worldview, God levels all people (mainly, men) equally before his power. Paradoxically, however, those in control of God's law would have more power over others. The sharia struggle in Nigeria can be read therefore as one group of men attempting to gain power over another.

More paradoxical, perhaps, is that feminist responses to the international rhetorical battle of sharia in Nigeria often limits itself to reacting to what they argue is a Western-dominated geopolitical order that, in their view, causes this reactionary masculinist order. I believe this assumption of causality in many cases is flawed, and from a historical perspective can be shown to predate colonialism. Because of this inequitable state of postcolonial geopolitics, the argument continues, Western feminist scholars such as Leila Abu Lughod (2013) and Saba Mahmood (2005) have focused on the risks and dangers of misrepresenting Muslim societies and of politicizing scholarship; they also warn of Western philosophical biases as Muslim societies are read. In a world where critiques of the status of women in the Muslim world can be used as justification for military adventurism, this work in response to Western biases and blind spots is of great importance. With these well-placed critiques in mind, however, we must go on to account for the nuanced thoughts of indigenous Muslim women who critique both political sharia and idealized sharia. I describe next the most

common reactions to sharia reimplementation in Northern Nigeria and the trial of Amina Lawal, and present evidence from my fieldwork that I have not previously analyzed or published to account for a narrative of women opposing or critiquing sharia.

International Condemnation of Stoning in Nigeria

"Legal warfare" is a phrase Northern Nigerian scholars have been using for decades to describe the disruption British colonialism brought to their Islamic legal system and culture. Many contemporary scholars understand the human rights community's universal condemnation of Nigeria after Lawal's trial within this same history.

The stoning punishment has been found to be in violation of several human rights conventions to which Nigeria is a signatory, placing Nigeria in constant potential violation of international agreements and law. Sharia is in potential violation of the International Covenant on Civil and Political Rights (1966), the Convention for the Elimination of all forms of Discrimination against Women (1979), the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (1984), and Convention on the Rights of the Child (1989) (Peters 2001, 37). Stoning can be described as torture, cruel, or degrading, children's rights may be violated, religious freedom circumscribed, and the principle that all are equal before the law threatened. Many of these violations of the Islamic Penal Code are specific to gender: the Zamfara Penal Code s. 76, a post-1999 revolution sharia penal code, permits physical correction of a wife by her husband and stipulates that because of implied consent, a man is not capable of raping his wife. Section 68 of the (Nigerian state of) Niger penal code holds that the testimony of men is worth more than women in proving *zinā* (ibid., 19). Islamic penal law also brings potential violations of the right to freedom of religion as Muslims cannot change their religion—or commit apostasy (*ridda*)—on pain of death. *Ridda* also entails the loss of civil rights, such as the right to be married (marriage of an apostate is dissolved immediately), and the right to own property.

The initial response from Western human rights organizations to Lawal's sentencing was unequivocal, and in many instances quite unaware of both the basic context of the case or the measures being taken by local actors to quash Lawal's conviction. Bill Graham, Foreign Affairs Minister of Canada, remarked, "We totally reject that sharī'ah law should act in a way that is contrary to international norms" (*Kano Online* 2002).

Amnesty International beseeched Nigerian authorities to abolish all torture and cruel, inhuman or degrading punishments, and to observe the legally binding international human rights conventions to which Nigeria is a signatory (Amnesty International). Interestingly, Amnesty International further urged Nigeria to bring their laws in line with the 1999 Nigerian Constitution, suggesting that the organization was unaware of the robust debate in the north that argued for precisely this position. United States President Bill Clinton personally pleaded for Lawal's life to be spared during a speech on democratization to an audience that included Nigerian President Olusegun Obasanjo as well as several other West African leaders. Clinton said, "I hope and pray that the legal system will find a way to pardon a young woman convicted to death for bearing a child out of wedlock" (ibid.). President Clinton likewise did not seem to be aware that President Obasanjo, a Christian from the south, no doubt opposed sharia and this instantiation of it much more than he did. For all practical purposes, it was not within Obasanjo's power to stop this case.

Contrary to the conventional wisdom that this intervention from the human rights community is the reason Lawal was eventually acquitted, I believe the Western reaction to Amina Lawal's case played a more complex role in her eventual acquittal. In many ways, the Western reaction was actually counterproductive in influencing popular sentiment, and at the level of the judiciary and prosecution, I see no direct evidence that the Western reaction had an effect. Regarding Amnesty International's letter-writing campaign against Lawal's trial, for example, Governor Aḥmed Sani Yerima's response was typical, here represented by Nigerian scholar Andrew Iwobi (2004, 141):

> Also pertinent are comments by Governor Sani of Zamfara State, who recently stated that he had received at least 8000 letters from human rights and nongovernmental organizations pointing out that the world is now a global community which has gone beyond the age of amputation, flogging and so on. He dismissed such letters with the observation that their writers did not appear to appreciate that such punishments had been ordained by the Qur'an.

(Masculinist) Reaction to Western Criticism

One of my informants echoed what I would often hear about Western hypocrisy:

> Most of the Western World believes that they have a moral obligation to stop Amina Lawal's stoning to death sentence. It is, nevertheless, far more complex. The world views of the two societies are different. The West has discarded God as the pivot of its philosophy and chose Man. All prohibitions of God, therefore, were legalized except for those that disturb man's pleasure. Hence sex by consenting adults is not a crime in Western societies but in Muslim societies all these are illegal because the Muslims still uphold Divine prohibitions.[1]

Muslim societies are framed as "still uphold(ing) divine prohibitions" of divine law, while the west had "discarded" any such concern. However, stoning and the punishments for illegal sexual activity in the Islamic tradition have been exceedingly rare throughout history, while Western societies have also taken legal steps to control female sexuality throughout its history. It seems that the assertions above are in the service of positing an essential civilizational difference between Nigeria and the West to show that returning sharia to Nigeria is an inevitability. Many Northern Nigerian commentators ironically parody a discourse that pits their society against "modernity," while this desire to reclaim wholeness through sharia can be seen as a desire to mend that societies modern postcolonial fracture. As Iwobi (2004, 140) writes:

> Even though the Nigerian Government has shown no inclination to withdraw from treaties prohibiting cruel and inhuman punishments which it has duly ratified, the operation of these treaties within the Nigerian context has been vigorously contested by Muslim advocates of the Sharī'ah reforms. The prevailing atittude in Muslim circles is vividly exemplified by a recent publication of the Supreme Council for Sharī'ah in Nigeria (SCSN) which portrayed Nigeria's ratification of various United Nations instruments concerned with human rights a spat of a "United Nations covert campaign against Islam."

Commenting about Lawal's case, a professor at the University of Sokoto named Dr. Guando took pains to emphasize that the recipe for Lawal's freedom and justice is contained within Islamic law itself:

> Even within the context of Islam, she could have denied it. People are also eager to see her stoned. Overall, the love of Muslims for the Prophet's sunnah is more than their love of Amina Lawal. They thought the lawyers and the judges themselves did their best as Muslims. Setting her free is what the sharī'ah was after.[2]

Women's Voices

A Libyan scholar I met in Northern Nigeria described to me one night his theory about sharia, culture, and orthodoxy. He commented that after decades of work as an Islamic legal scholar among several North African Muslim cultures, he was faced with a paradox: all of those societies followed Islamic legal orthodoxy, at least in theory, but all of them seemed to emphasize and deemphasize aspects of the law. For example, in Morocco, he said, attending to the five daily prayers was not as emphasized as absolute abstention from alcohol, while in Nigeria, according to this scholar, polygamy is emphasized as a sacred right. Polygamy's sanctification in Islamic law is important because polygamy was standard practice in Northern Nigeria before the advent of Islam. There is no escaping culture, he added, and no practical orthodoxy that escapes its influence. In my experience in Northern Nigeria polygamy was almost totally normalized and defended by men, while many women I spoke to deeply opposed the practice.

The following is an excerpt from my conversation with a Northern Nigerian man about gender:

> I asked (name withheld) about his wives: he seemed like an honest and talkative person, so I decided to come with the personal questions. "Do you have more than one wife?" "I used to have two … the second one caused so many troubles … abah!" "How did your first wife feel when you married the second one?" Laughs, "Well, she was not happy … she did not want to see the second one, did not want to stay with her." "Are most of the men here married to more than one woman?" "Yes, if you can afford it, if you can clothe her and feed her and pay the dowry …" "How many wives does Malam (name withheld—a well-regarded Islamic scholar I met earlier that day) have?" With evident pride, "oh, he has four." "How many kids?" "Oh, I don't know his kids … maybe around 10." Then I asked a question that really does befuddle me: "Doesn't it create a shortage of women when one man marries so many? (name withheld) says, "no, because there just are more women than men, and men can easily die in a truckload, say if you're driving to Kano with a truck load of men and there is an accident, and each of these men has a few wives, this still leaves a lot of women."[3]

The women's opposition to her husband's polygamy here is minimized, perhaps because polygamy is so widespread that a senior wife's pain about the practice is too normalized to truly notice. From the woman's per-

spective, even though polygamy has been a common practice for many generations in Northern Nigeria, it hasn't seemed to inure them to the pain of suddenly becoming a "senior wife" after the arrival of a "junior wife." In fact, there is an entire genre of women's folk music in Northern Nigeria dedicated to lamenting polygamy, and a senior wife poisoning the food of her junior counterpart is a favorite theme of Nigerian soap operas and Nairaland productions. A man's capacity to financially support more than one wife is a matter of pride. I would like to add here for the sake of accuracy that some women I met—almost all wives of very rich men—did not complain to me about polygamy at all, and seemed to treat their cowives as sisters. Depending on the open-mindedness and kindness of their wealthy husband, they took up art, craft-making, or further education in their lovely home. On the other hand, I met very well-respected male intellectuals who purposely limited themselves to one wife as a sign of reform and fairness.

I got to know a variety of intellectual men in Northern Nigeria, including an array of scholars, lawyers, and long-time friends who were some of the main agitators for the sharia revolution of 1999. Below is an excerpt from my fieldwork about my experiences and mixed feelings about them:

> Spent the day in Zaria, where I became more acquainted with why it was perhaps Steed who identified it as the center of Islamic militancy in the north. The people I met were also the most passionate and interesting that I interviewed; and this was probably the single longest interview, with the most enthusiastic audience. I met with (name withheld), one of the chairs of the commission to reintroduce sharia in Zaria, and his very interesting friend/associate. We covered topics from the constitutionality of sharia (he doesn't care and doesn't respect the Nigerian constitution) to women's issues—of course men are supposed to control women! Things like the early pregnancy disease are western propaganda; he was convinced the polio vaccine actually causes polio. And the western anthropologist Margaret Mead is the one who proved than men are dominant over women.
>
> But there were topics about which they were more credible. Why should they follow a constitution that no one respects and that was imposed by the British colonizers? I think their reasoning about Islamic law is more flawed than their reasoning about colonialism—they feel they have to follow it in its entirety and in form and content. But wait, I said, what if the federal government or the UN or another body proposes a law that in content resembles exactly that of the sharia. It's not the same form! They didn't feel this was possible. One of the men seemed to enjoy being provocative; I hope

> my poker face did not give away that he was provoking me, but I could be wrong. He would say things like, "feminism! brahahahahahahah! reproductive rights! hahahahahahaha. There was also a lot of misinformation—the idea that birth control causes cancer, or that having eleven children really wouldn't hinder most women from getting a PhD—look, there's one such woman in this here center!"
>
> On the other hand, there's the question of the colonization of Africa and that is a serious subject. I feel torn because I liked those guys; they were passionate. But by any definition, they were fanatics. Only total sharia will do. No compromise. They hate the state. We want to be like Saudi Arabia. God said it, and it is. Men rule, naturally.
>
> When I got back to my room I felt totally depressed. I had to admit that on a certain level those men scared me. They were so uncompromising, so sure of their position, so blunt when it came to women … I liked them, well, at least some of them, I understood them, I even empathized with them; but I am still scared of the implications of their thinking.[4]

I include this passage about my mixed feelings and turmoil about the more militant and uncompromising men I met in Northern Nigeria to show that it is impossible to characterize them in only one way. They were very smart, well read, idealistic about their country, deeply wanting positive change, steeped in Islamic philosophy and law, caring about the poor, and men who cared very much about their families. These were very respectable men, and men who had earned the respect of their society. Discussion about a theoretical sharia society animated their afternoon meetings with each other over the tea with condensed milk and biscuits that seem to taste uniquely good in Nigeria. Their critiques of the economic capitalist world order were difficult to argue with. The way they were going to save Nigeria, however, required what they conceived of as a "natural" male domination, and sharia for them bolstered the legitimacy of that order.

Unofficial Women's Voices

After these experiences with all-male groups, I started to make a concerted effort to interview women, but unofficially—I was interested in what they really thought. I used to buy bottled water and food every day from a little store up the street from the research institute I was living in, in Kaduna. Women ran the place, and they always smiled and made small talk when I came in, but I had not yet had a substantive conversation with them. I wrote in my journal one day:

> I finally spoke with the husband (!) of one of the women who works across the street. First of all, it should be noted that once again I find myself in a male domain, talking about politics, somehow exempted from the manual work these women were doing and from the child rearing, free to sit outside on a bench and talk about politics while sipping a soda.[5]

Writing in 2015, I detect a slight bitterness in my tone born of having gone several weeks without a substantive conversation with a woman about sharia, a movement that arguably affects them disproportionately. I had been interviewing men who spoke for women, who often claimed that women needed to be controlled by men, but I was having a difficult time speaking to women themselves, until I met *Ayesha.[6]

One evening I was sipping tea in her home, a friend and activist I had finally gotten to know. It was clear to me that the questions she was asking me about myself were in the service of understanding whether I was married. I told her I was not, and she seemed to relax, concluding that I must be open-minded enough to talk to.

"You know, I didn't want to tell you this earlier in the car but … well, we have this 'problem' here in Nigeria …" She told me about a woman who had propositioned her sexually. She described her feelings toward this woman—exhilaration and confusion. She spoke of instances in which she had heard of lesbian activity, and how much of an interest she took in this "problem," and it soon became clear to me that she knows all of the lesbian enclaves in the north and maybe one or two in the south.

She spoke floridly of the sensuality of scents, and then showed me her very extensive collections of perfumes lit by a lone light. These scents, she told me, bring sexual feelings out in her when she smells them on a woman, and that scares her. Sometimes, she and these prominent women of the town travel together and share the same bed and she smells them. "I am vulnerable to this," she said. "I just try to keep myself safe. One slip up, and there could be a disaster."

She described a woman she met in Kano who clearly had captivated her. She was driving a jeep and smoking a cigarette—outside! Not hiding in the bathroom. She told me a friend of hers called her one day and said:

"Have you had an orgasm?"

She replied, "I have had sex more times than I can count. But orgasm? Please! Ask the next person!"[7]

Through her laughter at recalling this conversation, she estimated that 80 percent of Hausa women have not had orgasms. They have sex simply to please their husbands. Human immunodeficiency virus (HIV) affects

wives because it is thought that it is only she who should be tested. If she is positive, he "sends her packing."

"It's all about men," she said, shaking her head. "You don't even trust the man you're lying with. They might leave you tomorrow. Justice is a word that is not even known in our dictionary. Love is not an issue in Nigeria. It is all about what you have—your position in society."

When I first met a prominent Nigerian Muslim academic and administrator,[8] she was cautious, saying of Islam: "You can't fault it—the problems are only with interpretation." I felt she wasn't telling me what she really thought. As we got more comfortable, the professor and I wondered whether if a Muslim man wants to beat his wife, he could find justification to do so in the Qur'ān. We agreed this was theoretically possible. To combat this problem, the professor suggested change through education, "changing the culture." After a pause, she added: "Justice does not exist outside the Qur'ān. Muslims are afraid of their reasoning. It is a taboo to challenge what is written. There is the law of apostasy—once you challenge the law, you can be killed."[9]

I sensed here that we arrived at what she really thought the root of the problem was. Though Hausaland has been historically inculcated in an 'Asharī theological heritage, which holds that notions of truth and justice are found within, and not outside (through the use of reason) the Qur'ān; this pattern in contemporary Northern Nigerian culture is less explained by their 'Asharī heritage then by more contemporary issues such as the lack of credibility of the human rights apparatus that would allow them to frame the notion of "rights" in a way that is extra-Islamic.

Describing the sharia as "male oriented," another informant told me:

> A woman might be unhappy, but she can't stop a husband from taking a second wife because of the permission God has given him. Many women are looked at as weaker, and many women are not educated. It is rare for a Muslim man to have one wife. Some men want sex every day. God has allowed him to do this.[10]

What are women's options under these circumstances? According to this informant, a wife tries to make herself more attractive. She uses juju, or witchcraft; she is left with no choice but to turn to the mystical. She continued:

> The 'ulema connect being submissive with being a good Muslim—these women want to be "seen" as pious. Women often want to—and do—kill

> their husbands. There is a notion that Christian woman should work while Muslims don't. The Fulani are tending the cow, they don't have time for religious ritual; the Hausa read the Qur'an, they are the ones who are oppressing women. The solution is to educate women and to change the culture.[11]

According to our informant, the stoning trials of Saffiyatu Husseini and Amina Lawal marked the beginning of "women thinking twice": "These two women were poor, and yet there are plenty of rich women who have done the same thing. People realize it's not fair because in one case the man was flogged and let go."[12] Singapore and Malaysia are inspirations to her because they managed to change inheritance rules in Islamic family law through activism.

A highly educated woman, with a rare, high station in Northern Nigerian society, told me that in the end, marriage is about security, not love:

> No one is happy with polygamy. When the cameras are off, no one would like this. The situation for women is really bad. No woman likes polygamy, no matter what they may say to the cameras. But what can they do? It's God's will. She won't be happy but she will accept it.[13]

She says women are frequently abandoned, left without food, hungry, and pregnant—she says the maalams (religious scholars) are the worst—marrying and impregnating a new virgin girl every two years. A friend of this woman's came in part way through our meeting; she was a Christian who worked in a bank. Soon enough, she began to chime in as well, telling me that Christian men were also polygamous; men are going to reach for interpretations that give them the most leeway, regardless of faith.

The woman mused, "I think it's like that in most Muslim countries."

I realized at this point that she had a problem with Islamic texts themselves.

I do not believe we as Western scholars have developed a sufficient analytic frame to accurately come to terms with the women I just described. While ethical approbations from Western scholars urging us not to produce work that can be abused by empire are extremely important, they at best do not offer sufficient frameworks to represent Nigerian women's voices, and at worst might encourage a cherry picking of the evidence or self-censorship. I also fear, looking back on my previous work on Nigeria,

that certain scholarly trends—for example, representing Islamist voices as the "authentic" Muslim perspective—might prejudice a researcher into foregrounding that particular voice over, say, women who accept non-governmental organization (NGO) funding from Denmark. Scholars are rewarded for emphasizing the former voice, and cautioned when they foreground the latter. The women's voices I present below convey frustration with their position in Nigerian society and their barely concealed concerns about sharia.

A Vision of Sharia and Gender: Bilqisu Yusuf

One of the most interesting women I met in Nigeria was Bilqisu Yusuf, a prominent journalist and activist on a national scale in Nigeria. Yusuf sadly died on September 24, 2015 in a stampede while performing the hajj in Saudi Arabia. Yusuf's death reflects intra-Muslim systems of oppression that are relevant to our discussion here; to come to terms with what it means for an African woman to have made the trip to Saudi Arabia, a trip I assume she has been looking forward to her entire life, only to be trampled in a stampede reportedly caused by a Saudi official blocking the streets with a motorcade—requires a "safe space" we do not currently have. For the fear always is that criticism and "airing dirty laundry" will embolden right-wing Western forces that look for excuses for military action. On the other hand, without truly understanding and analyzing these systems of oppressions, they become almost impossible to dismantle.

Bilqisu Yusuf was a tireless activist that was deeply engaged with women's issues, about which she makes global connections. She wrote, "The history of Nigerian women's struggle to improve their situation is similar to that of their counterparts in other areas of the world" (Yusuf 1991, 89). From Yusuf's perspective, Western education, rather than being a threatening imposition from outside, is today necessary for Nigerian women's empowerment. That Christian missionaries first brought Western education to the non-Muslim south has for Yusuf, at this moment, resulted in a disadvantage for Muslim women. To her, Northern Nigerian society should face this rather than continue to fight against Western influence. Because of a hesitation to do this, Islamic educational history in the north was different from the south. The north was influenced by Arab North Africa. Islam was introduced through the trans-Saharan trade, along with an educational system quite distinct from that of the West. "Because Islam pervades every aspect of life, it has had a greater effect on its adherents

in Northern Nigeria than any other single factor" (ibid., 90). This effect includes limiting "spatial freedom" and therefore education and political engagement. Yusuf cites Speaker of the House of Representatives of the Second Republic Benjamin Cha'aha, who spoke of why women were excluded as committee chairpersons: "If women were picked to head any of the thirty-four committees, men would refuse to serve under them … Such committees would die natural deaths." (ibid., 96) This is the fundamental cultural problem Yusuf is trying to combat.

Yusuf attributes Northern Nigerian women's poor level of education and political representation to women's vulnerability to "superstition." Yusuf links this state of deprivation to the days of the Sokoto Caliphate, where, Dan Fodio's highly learned daughter notwithstanding, "minimal literacy skills and religious tenets were taught to women—just enough to allow them to say their obligatory prayers." Since that time, Yusuf argues that men have "deliberately interpreted laws to deprive women of their legal rights." However, while evoking this history in a surprising way—perhaps to signal the deep pervasiveness of the cultural problem—she argues, I believe, necessarily in her society, that these conditions have no relevance or justification in Islam, and are in fact in opposition to Islamic principles and injunctions (Yusuf 1991, 92). Here, we see both a subtle indictment of the negative consequences for women resulting from gendered space delineation in the dominant Islamic tradition in the north, followed by a rhetorical statement that distances the tradition as a whole from these restrictions. The same move that exposes and then elides misogynistic histories is deployed with regard to the Sokoto Caliphate (r. 1804–1903), while Yusuf criticizes the lack of emphasis on female literacy in the Caliphate. Yusuf provides the following quote from jihād leader Uthman Dan Fodio to challenge that version of the history of the Sokoto Caliphate:

> Oh Muslim women, do not listen to the words of the misguided ones who seek to lead you astray by ordering you to obey your husband instead of telling you to obey Allah and his messenger. They tell you a woman's happiness lies in obeying her husband. This is no more than a camouflage to make you satisfy their needs. They impose on you duties which neither Allah nor his messenger impose on you. They make you cook, wash clothes, and do other things which they desire while they fail to teach you what Allah and his apostle have prescribed for you. Neither Allah nor his apostle charges you with such duties. (ibid., 92)

Yusuf dates this statement from Uthman Dan Fodio as 1981, indicating that this quotation derives from a secondary source that perhaps paraphrased and idiomized his language. The point is that it seems necessary for Yusuf to have grounded her critique of one manifestation of Islamic culture in the valorization of another. She cannot say that she must ground her critique in this way, but as a scholar that understands Nigerian culture, it is part of our job to point that possibility out.

Yusuf developed adult education projects to improve women's position in Northern Nigerian society. Describing free evening classes in Kano City that gives courses in literacy, childcare, income generation projects, and Islamic religious knowledge, Yusuf laments that "perhaps the most difficult" is the stipulation that "women may attend these classes only with the permission of their husbands: the agency does not want to be responsible for conflict between partners" (ibid., 93). This hurdle makes evening classes, to which women, exhausted from a day of domestic labor, nonetheless frequently attend. Yusuf cites the example of Malam Aminu Kano to justify her activism; he was the founder of Northern Elements Progressive Union, a revered institution founded in the 1960s to educate and decolonize Northern Nigerians. According to Yusuf, Malam Aminu Kano urged Northern women to "'escape the state of total subjugation' in which Hausa-Fulani women found themselves and to react against centuries-old concepts of respect, deference, modesty and their 'proper place'" (ibid., 94). Here again, an appeal is necessary to a respected male authority to argue for wives to be allowed to leave their homes alone for nonfamily-related activity.

In another appeal to male authority, Yusuf recalls a conference held by WIN (Women in Nigeria) in 1982, where a "pious Muslim male" argued: "No nation can be said to be developed or civilized if its menfolk relegate its womenfolk to the background … Such nations must be condemned as primitive."[14] One of the most serious manifestations of this relegation of women to the "background" for Yusuf is around the issue of early pregnancy, childbirth, and divorce:

> Pregnancy at too young an age may result in death during childbirth; it may also cause internal rupture of the bladder and rectum (vesico vaginal fistula [VVF]; Newswatch, April 17, 1989, pp. 36–37). In the latter case, the condition is often worsened through treatment by some midwives, whose unsuccessful surgery leaves a young girl with permanent internal damage. Thus she becomes "undesirable" to her husband, who promptly divorces her, leaving her suited only for a life of prostitution. (ibid., 97)

Yusuf is one of Northern Nigeria's most prominent activists against early pregnancy and the damage it can cause to the developing sexual organs of young girls (VVF, as cited above). For this activism, for which she is sometimes awarded money from Western nongovernmental organizations, she is often the target of suspicion and criticism by Northern Islamists.

As a broader strategy for addressing these concerns, Yusuf advocates a reinterpretation and perhaps reimagination of what the Islamic tradition in north has to say about women's role in an Islamic society. Reflecting on the WIN conference, Yusuf writes, "Participants stressed that no solution to these problems was possible without radical social change and the complete elimination of all forms of human exploitation." (Yusuf 1993, 91) While Yusuf presents her solutions in careful language calibrated to avoid offending the masculinist worldview, behind the practicality of her message lies a broader, more revolutionary one. It is interesting to note that the very fact that Yusuf and other women are conscious that they must frame their revolutionary agenda in a certain socially acceptable way means that they themselves were not inculcated with this masculanist worldview in the first place. This begs the question: is the masculanist discourse also a construction for men, but one that they buy into because they too are being coerced? I suspect so, which is, interestingly, a reason perhaps that Nigerian women are all the more comfortable challenging this worldview.

Western Scholarly Analytic Frames

I presented in this piece both hegemonic masculinist and informal women's accounts of sharia, gender, and sexuality in their Northern Nigerian society since the 1999 sharia revolution. I recalled the limits of the massive Western reaction to the case to understand the many complexities of Nigerian society and politics, and some of my own frustrations as a feminist researcher who both sympathized with Northern Nigerian masculinist men's political project to decolonize their lands and felt private frustration and anxiety over their assumption that subjecting women was a natural piece of that decolonizing process.

I do not feel we have this conversation nearly enough in Western scholarship, and I understand why in the post-September 11, 2011 era that has seen the targeting of Muslims throughout the world and catastrophic Western-led wars in the region. However, to create accurate scholarship of Muslim societies from Nigeria to the United States, we need to be able to talk about critiques of Islamic law and other aspects of Islam in an environ-

ment of political and discursive safety, where one's motives are not always questioned.

Lila Abu Lughod (2013) has written powerfully about the dangers involved in characterizing the lives of Muslim women. Objecting to the west's portrayal of Afghanistan's women and the Bush administration's use of that portrayal as one of the reasons to justify war in Afghanistan, Abu Lughod asks us to think very carefully about the politics of representing Muslim women in Western scholarly and policy circles, and in the media. But some of Abu Lughod's renderings of Muslim women gloss over factors that, if explored, would give us a deeper and more variegated sense of her experience, for example, under sharia laws. In one example, Abu Lughod writes:

> In recent years, Shari'a—the term people use loosely to refer to law that derives from Islamic legal traditions—has become an international symbol of Muslim identity and, to many in the West, a dreaded and traditional enemy of women's rights. (Abu Lughod 2013, 15)

Here, "Shari'a" is described neutrally as "law that derives from Islamic legal traditions," and only for the west is sharia "dreaded" or an "enemy of women's rights." It is through making such a statement in passing that an important aspect of the sharia problematic is elided: there are Muslim women in the postcolonial Islamic world who also feel this way about sharia. A lot of them. We need a means to talk about this without invoking automatic critique from scholars who are understandably concerned with potential political fallouts. More difficult still is determining how to talk about "native" objections to sharia without actually falling into the trap Abu Lughod is understandably concerned about, namely empowering imperial violence.

I admit this is a difficult line to walk. From within the scholarly world, it is tempting to say that since Said's critique of Orientalism is so embedded in the ways we think about the region that there is no more need to call attention to Orientalist discourse. A cursory glance at the reality of politics from US foreign policy disasters such as the decision to invade Iraq to growing American and European Islamophobia, however, gives the lie to that assumption. As scholars we do not have an apolitical space in which to frankly discuss sexism, patriarchy, and violence against women in Muslim-majority societies, but I am not sure that means we should stop trying to do so.

Conclusion

In recent decades materialist explanations for traditional "revivals" in the Muslim-majority world have been met with scorn. Yet academic trends that value critiquing Western discourses, over grappling with empirical realities without letting theory miscast practices we observe or speech we hear, can at times misrepresent the fullness of our subjects. Reflecting on Balqisu Yusuf's too-short life, I recall my impression that her work from within the boundaries of acceptable Islamic discourse was in some significant part strategic. It is not that Yusuf and other women were not partially constituted by the values of their society, they were shaped by them to some extent, and they regularly expressed love and loyalty for their people and culture. Yusuf and other women critical of the masculinist paradigm were constituted in part by other values including a respect for Western education, universal human rights, opposition to exploitation, respecting minority sexualities, and gender equality. I am concerned, though, that we fail to describe and pay tribute to the fullness of their imagination for better, freer conditions for Nigerian women unless we take seriously their critiques of religious hegemony, including post-1999 sharia. As a scholar, I struggle to omit the details of these women's struggles that leave them vulnerable to powerful outsiders who want to "save" them militarily. Yet I submit that an apt tribute to a woman as powerful and important to her society as Bilqisu Yusuf would compel us to refine our analytic frames to more accurately express the fullness of her life, and that of her sisters and friends in Northern Nigeria.

Notes

1. Interview with Anonymous, April 2010, Jos, Nigeria.
2. Interview with Dr. Guando, May 2010, Sokoto, Nigeria.
3. Field notes, March 10, 2010.
4. Field notes, March 19, 2010.
5. Field notes, March 18, 2010.
6. Ayesha is a pseudonym.
7. Excerpt from my forthcoming book.
8. After much deliberation, I have decided to conceal her identity for her safety.
9. Interview, with identity kept confidential, April 2010, Jos, Nigeria.
10. Ibid.

11. Ibid.
12. Ibid.
13. Identity kept confidential.
14. Interview with Bilqisu Yusuf, May 2010, Kaduna, Nigeria.

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CHAPTER 9

Islamic Movements, Women, and Social Reform: Who Speaks of the Sharia in Pakistan?

Meryem F. Zaman

Introduction

Pakistani political and public discourse over the past two decades has been subject to an intensification of the battle over religious authority: which agents are authorized to speak for Islam, and where is the "true" Islam to be found? These questions hover over issues of private morality and public life, including but not limited to the role of women in society, the appropriate response to terrorism within the country, and laws which trespass on areas seen as the sole province of religious guidance, such as the Hudood Ordinance, the Blasphemy law, and the Protection of Women Against Violence Act. Agents and movements speaking for "Islam" weigh in on the appropriateness of these laws in relation to Islamic theology and contribute to a vibrant discourse regarding the role of religion in contemporary Pakistani society. The politically oriented Jama'at Islami plays a major role in shaping this discourse by situating laws in relationship to the movement's reading of the *sharia* (most commonly translated as "Islamic

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law"). Members of several Islamic movements which are not explicitly political often take part in these debates and contribute to a rapidly shifting social landscape which has seen an increasing number of urban middle- and upper-class women veiling and promoting spiritual reform through educational ventures and one-on-one interactions in which they issue the *da'wah* (invitation) to what they frame as correct Islamic practice. At the same time, piety movements' leadership often disavows interest in "politics" and does not draw on the authority of the *sharia* when promoting spiritual reform focusing on individual religious practices, such as prayer, fasting, recitation of the Qur'an with correct pronunciation (*tajwid*), and the reform of social life according to "Islamic" standards.

In this chapter, I argue that the history of the implementation of Islamic law in South Asia shapes it as a construct, determining which individuals and groups can claim to speak for and of the *sharia* in Pakistan. The *sharia* is a concept spanning across Islamic countries and societies, and it relates itself to a geographically wide-ranging intellectual tradition that stretches back to the classical period of Islamic theology (El Fadl 2005); this history leads to an assumption that the *sharia* is a unitary entity across Muslim countries, denoting a uniform a-cultural law. I trace the history of Islamic law in South Asia, as well as its contemporary associations and uses in Pakistan, to illustrate the ways in which local histories shape the meanings and associations the term *sharia* encompasses and constrains. In Pakistan, colonial history colors the connotations of the *sharia* itself and the conditions which individuals and movements can draw on its considerable authority to sponsor their visions of an "Islamic" society.

Academic engagements with Islamic movements involved in constructing religious authority meticulously detail the specifics of these movements' orientation toward politics. Much ink has been spilled in drawing distinctions between those movements which engage with national politics as a primary means of Islamic reform and those that hold other reformist goals. "Islamists" or "fundamentalists" are commonly understood to focus on the creation of Islamic states through political action, and Islamism is presented in the literature as an anti-Western (Amin 1988) and/or anti-imperialist (Patnaik 2003) critique of Western modernity (Moghissi 1999). In contrast, "neo-fundamentalists" (Roy 2006) or "traditionalists" (Iqtidar 2011) are written off as a primarily "sociocultural phenomenon" (Roy 2011) working toward the development of a transnational Islam cleansed of cultural accretions in order to create a global Muslim *ummah*. These fine distinctions evaporate in everyday Pakistani

society, where all social movements promoting ideas of Islamic reform are understood to constitute a single interest group of *mullas*[1] who promote the same political and social agendas based on their interpretations of correct Islamic practice.

Pakistani piety movements' relationship to the *sharia* is different from that of religious movements elsewhere in the Muslim world; most Islamic movements globally draw on the idea of the *sharia* to bolster their proposed social reforms (Ricklefs 2008; Hefner 2011; Maznah Mohamad 2010a, b). In contrast, piety movements in Pakistan do not refer to Islamic law as a primary source of the religious reforms they promote, or claim to be engaging in the implementation of the *sharia*. This restraint on the part of Pakistan-based piety movements is somewhat deceptive; these movements use the idea of a divine system created by God in order to promote radical social reform. Piety movements based in Pakistan draw on the sources of the *sharia*, the Qur'an and Hadith, in order to create templates for the ideal Islamic society. These movements' focus on personal reform, while not explicitly political, still has political significance (Van Der Veer 2002). In using the Islamic sacred texts to create a vision of a purified Islamic society, piety movements make profound claims regarding the relationship between the individual and society, gender roles, and the role of the State in everyday life. At the same time, these movements denote their efforts to segregate movement spaces from "politics" by avoiding the use of the word "*sharia*."

The assumption that religion is a "primary fault line" (Siddiqa 2010) dividing public opinion permeates Pakistani discourse. My research on Islamic movements in Pakistan revealed that most of my urban Pakistani informants were unaware of a distinction between the Jama'at Islami, a movement with political goals, and Al-Huda and the Tablighi Jama'at, movements which eschew politics. Informants unaffiliated with these movements understood them to promote similar sartorial and social reforms, and thought that their members engaged in similar social behaviors, including insisting that there be no music at parties, and disapproving of "mixed" gender gatherings. Movements promoting primarily personal religious reform are conflated with political movements in popular Pakistani discourse, and urban Pakistanis accuse Islamic movements across the sociopolitical spectrum of polarizing society, dividing the Pakistani elite into an "us" and a "them" and supporting "extremism" (Siddiqa 2010). Siddiqa (2010) has argued that the "latent radicalism" represented by ideas of Pakistan as an Islamic state, and images of the West as a threat

to Pakistan, is in part the product of "Islamic social movements … like Al-Huda and the Tableeghi Jamaat" (para 32).

The local perception that all Islamic movements are similar impacts revivalist outreach and behavior in Pakistan. As White (2012) has observed, one of the common questions directed at Islamic expression in Pakistan is "Why don't the moderates speak out?" I argue that the conflation of religious movements in the popular perception of the Pakistani public creates an atmosphere in which movements are unable to openly criticize each other; all Islamic movements are seen as heirs to the same history and traditions, and the assumption that they promote similar religious reforms limits their ability to openly critique each other's approach. The blurring of the imaginary lines between the explicitly political and the professedly educational Islamic movements "in the field" has significant consequences for these groups' relationships to each other, the state, and ideas of politics.

Subjects are created discursively against antagonistic "others" (Mouffe 2005). In Pakistan, agents of Islamic reform are thought to share a collective identity and to promote controversial religious practices. Their construction as a collective results in a tension between these movements competition for religious authority and their limited ability to criticize each other's methods to an audience which would not appreciate distinctions between them. Laclau and Mouffe (2001) have proposed an ontological understanding of the social as a discursive space in which agents construct identities through the articulation of difference. Identity politics is the process through which subjects create themselves discursively against the antagonistic "other." Contesting groups with opposing interests vie for hegemony, and an identifiable "we" fight against a "they" in order to create and maintain collective identities (Mouffe 2005).

These fault lines can be seen most clearly in the ways in which different Islamic movements invoke or distance themselves from ideas of the *sharia*, which is a key element of the contemporary Pakistani discourse on the Islamization of the State. Maneuvers through which ostensibly apolitical movements distinguish themselves from those making a claim on the State are subtle and can be seen in their relationship to the idea of the sharia. In this chapter, I demonstrate that the constitution of difference can be represented through silences as well as discourse, and that Islamic movements' relationship to and appropriation of the *sharia* signals their orientation toward politics. While not visible to outsiders, movements' verbalizations (or lack thereof) regarding the *sharia* signal their priorities

to their members and provide a roadmap for each movement's approach to creating social change.

Over time, the meaning and purpose of the *sharia* in South Asia crystalized until the *sharia* came to be seen exclusively as Islamic law. In this, the production and maintenance of the term "*sharia*" in Pakistan is tied primarily not to the "discursive tradition" of Islamic texts and argumentation, but to the history of the implementation of Islamic law in South Asia. This history, and the use of religious law to build national identities, conditions the ways in which Islamic movements in Pakistan draw on and simultaneously distance themselves from it, and impacts the claims they make toward *sharia* even today. At the same time, movements' understanding of the nature of the *sharia* impacts their outreach efforts, and might explain the growing popularity of Pakistani piety movements.

The Sharia as Legal Code

Sharia, literally translated, means "the way," and is a code of law with roots in the Islamic sacred texts, The Qur'an and Hadith (Mir-Hosseini 2006). Historically, the Islamic juristic tradition consisted of a network of geographically dispersed jurists who applied Islamic principles to a variety of problems cross a widely dispersed geographic network (El Fadl 2005). These historical roots make the *sharia* a matter of concern for a majority of contemporary Muslims and shape the importance given to it in the public life of many Muslim countries including Pakistan (Norani 2003). The Pakistani government, like that of numerous other Islamic countries, is frequently subject to popular calls to bring the state into conformity with "Islam" by implementing the *sharia*, which is imagined as a coherent body of law which has been discarded by irreligious governments (Hallaq 2004). Bookstores across the Muslim world are full of collections calling on the government to apply the *sharia*, which is visualized in this discourse as a globalized law applying to a transnational Muslim *ummah* (community of believers) (Hallaq 2004). Muslim publics often agitate for *sharia*-based laws because they respond to a perceived need for religious and cultural authenticity (Otto 2008, 17).

Jonathan Brockopp (2003) argues that the *sharia* is more of an ethical system than a legal one, evading the binary of permitted/prohibited followed by most legal codes. In premodern times, the *sharia* applied to both enforceable duties, which could be compelled by Islamic courts, and ethical obligations, the fulfillment of which was between the indi-

vidual and his creator (Ali 2006). Often, Islamic jurists' doctrines were not directly fulfilled by the courts, and were instead issued in the form of recommendations. The *sharia* separates actions into required and forbidden, but also goes beyond this binary to classify certain actions as *mandub* (recommended), *mubah* (permissible), or *makruh* (discouraged) (Brockopp 2003; Brown 2011).

In addition to promoting nonbinary classifications, the sharia is derived from *maqāṣid*, an Arabic word that means objective, intent, or purpose (Halim Rane 2013, 497). Abū Ḥāmid al-Ghazālī (d. 1111), one of the most prominent early Muslim theologians, stated that the primary objective of God's law was the preservation of religion, life, intellect, property, and progeny, and that all Islamic laws can be evaluated based on how they contribute to these purposes (Ibrahim 2014). The concept of the *maqāṣid-e-sharia* (purposes of the *sharia*) gained prominence in the fourteenth century, as the result of Mongol invasion, when jurists revaluated tradition in order to reconcile the *sharia* with the political, social, and religious changes that had occurred, including new trade practices that seemed to conflict with existing Islamic law (Halim Rane 2013). The *maqāṣid* can be divided into three categories: *maqāṣid amma* (general objectives), *maqāṣid juz'iyya* (objectives of particular rulings), and *maqāṣid khassa* (objectives governing a specific area of the law) (Ibrahim 2014). Jurists tied rulings in court to particular *maqāṣid*, and often personalized the application of the law to specific cases (Ali 2006).

The Sharia in South Asia

In Mughal India (1556–1875), the *sharia* was the legal system applied to all citizens of the empire. It acknowledged differences in religion without treating them as primary, and considered other contextual factors when making judgments. The need for secure commercial transactions drew litigants to sharia courts, regardless of their religious background (Chatterjee 2014). The roles of *qāḍī*s (judges) included settling business and personal disputes, contracting marriage with or without guardians, distributing inheritances, and drawing up legal sentences (Chatterjee 2014). Prior to the arrival of the British, South Asian laws were not monolithic across the region, but reflected the religious, political, and cultural diversity of the subcontinent. These political and legal arrangements ranged from the centralized Mughal Empire to Hindu and Sikh Kingdoms, small princely states, and self-governing hunter-gatherer communities (Lau 2010). One

of the common elements found in this diversity was that the legal traditions of India drew extensively on religious texts and precepts in order to create and maintain social order (Lau 2011). The other common element was the influence of locality; the further a community was from the center of power, the stronger the influence of local customs and traditions over legal matters. In practice, even the centralized *qāḍī* system did not penetrate deeply into the villages, and a number of disputes were resolved by local *panchayats* (councils) that referred loosely to a variety of sacred texts in order to reach their decisions (Chatterjee 2014).

Post colonization, the state intervened in the flexibility of the law, transforming the nature of the *sharia* itself. Contemporary Pakistani courts, and many of the country's laws, can be traced back to the *sharia* as it was modified during the British rule of India. The colonial legal system emerged through significant interactions with local laws and cultures, and the codification of law and legal procedure was dialogic rather than top-down. When the East India Company (EIC) came to the subcontinent, its primary goal in governing the country was to maintain political control with minimal military intervention. The EIC did so by promoting a policy of ostensible noninterference. In legal matters, the British claimed to be implementing local systems of law, which were codified so that they could be administered by colonial judges (Anderson 1993). In 1772, Warren Hastings, the first Governor of the Presidency of Bengal, declared that Qur'anic law would be applied to all situations concerning issues of Muslim marriage, inheritance, and religion (Lau 2011). The EIC's judges, assisted by local religious scholars, were popular for the adjudication of a wide range of disputes, including those that the EIC had decided fell under the domain of Islamic law.

In practice, British courts modified and pared down the role of the *sharia* in India over time. The judicial discretion that had prevailed during the Mughal empire's administration of the sharia seemed arbitrary to British administrators and the Indian Penal Code of 1862 removed Islamic provisions from criminal law and left the sharia to govern Muslim personal issues, including marriage, divorce, and inheritance (Zaman 2007). In 1864, British courts decided that there was a sufficient body of precedent to guide them in their application of the *sharia*, and that they could dispense Islamic law without the aid of Islamic religious scholars.

The codification of Anglo-Muhammadan law disrupted the fluidity of Islamic law in India and replaced it with legal codes based on translated Arabic and Persian works on Islamic law that were implemented by British

judges (Lau 2011). Post codification, the *sharia* came to be "increasingly seen as 'content' rather than 'process'" (Zaman 2007, 32). Judgments were based on strict applications of codified laws, rather than addressing themselves to theological desiderata. In theory, the codification of Islamic law so that EIC judges could administer it was meant to result in minimal disruption to Islamic systems of governance (Lau 2011). In practice, the codification of an "Islamic" personal law, administered by colonial courts, impacted both the substance of the laws and the politics of their implementation. Hallaq (2004) has pointed out that codification is a deliberate move through which governments restrict the interpretive freedom of jurists. The codification of the *sharia* refashioned the law, and prevented its traditional means of its interpretation and implementation from being practiced (Hallaq 2004).

The *ulamā* reacted to the modification of the *sharia* first with attempts to preserve it as a flexible system, and then by staking a claim to its implementation. The EIC's removal of the *ulamā* from their advisory position led to multiple *ulamā*-led attempts to put pressure on the EIC to reinstitute local religious specialists as advisors to colonial courts. Their primary concern in this effort was to ensure their control over the *sharia*, and to the authority linked to their claims to be its primary spokesmen (Robinson 2013). In one notable example, the *ulamā* indicated that female-initiated judicial divorces, which required the presence of a Muslim judge, were now impossible as no Muslim judges existed (Zaman 2007, 28). The result of this was to deny female petitioners divorces, and resulted in the apostasy of large numbers of Muslim women attempting to escape the jurisdiction of sharia law (Zaman 2007, 28). This was a clear attempt to pressure the EIC into reinstating Muslim advisors in the courts; however, like other such attempts, this one did not bear much fruit. Increasingly, the *ulamā* shifted from challenging the validity of EIC-derived Islamic law toward claiming a role in the administration of the law, marking a transition among the *ulamā* from viewing *sharia* as part of a larger process related to *maqāṣid* toward seeing the *sharia* as primarily content.

The emerging Pakistan movement supported the idea of *sharia* as content, and used it to argue that Muslims were a nation in need of a State (Lau 2011). Nationalist reforms in favor of Pakistan advocated for the creation of a separate homeland for Muslims based on the argument that Muslims were a distinct political community who possessed a uniform code of law. While the law administered by British courts was theoreti-

cally Islamic, courts often drew on local custom in order to make decisions. This practice damaged Muslim claims to nationhood, and activists in favor of Pakistan began demanding that judges put aside local custom in order to implement the codified *sharia* law. Muslim Nationalists began to demand a state-led Islamization in which "Muslim Personal Law" (as previously codified by the British) would govern all personal matters, and local custom would be put aside (Lau 2011). This colonial law was inherited by the nation-state of Pakistan, which then grappled with determining the role Islam would play in the laws of the State.

Islam in Pakistan: A Country for Muslims or a Muslim Country?

When Muslim nationalism in India culminated in the founding of the nation-state of Pakistan in 1947 the new state had to create a constitution and new legal codes. The rhetoric surrounding the Pakistan movement had drawn on Islam in order to rally distinct ethnic communities and create a national identity, while remaining unclear as to whether Pakistan was to be a secular country or one administering *sharia* law (Metcalf 2004). Was Pakistan founded to protect Muslims from living as a minority in Hindu-dominated India, or was it intended to be an Islamic state governed by *sharia* law? This question has remained at the heart of conflicts over Pakistan nationalism, and the role of Islam in the state (Shaikh 2008). Conflicts over the Islamization of Pakistan have centered on issues related to the *sharia*. Those individuals and groups that support the idea of Pakistan as an Islamic state have demonstrated this by pushing for the application of *sharia* law, and the inclusion of language related to Islamic law in the country's constitution.

Until the mid-1970s Pakistan's elites refused to commit one way or the other, allotting a primarily symbolic role to Islam in the constitutions of 1956, 1962, and 1973 while retaining the Islamic family law developed by British courts (Lau 2011). During this time of constitutional development, the Jama'at Islami, a political Islamic movement, functioned as a pressure group, demanding that Islam be given a role in the ideology surrounding the state as well as in the laws implemented by the courts (Moten 2003). The leaders of the movement saw themselves as engaged in an effort to convert the Pakistani state into an Islamic one (Moten 2003). Maulana Maududi, the founder of the movement, delivered a number of

lectures demanding that the constituent assembly repeal non-Islamic laws and implement the *sharia* (Moten 2003).

In 1979, General Zia ul-Haq imposed martial law on Pakistan, and attempted to build popular support by creating Islamic courts and advisory bodies to reform existing laws and bring them into conformity with Islam (Lau 2011). General Zia's Islamizing moves met the Jama'at Islami's demands for a *sharia*-based legal system, and Jama'at leaders assisted Zia in preparing a comprehensive Islamization program. Until the mid-1980s, the Jama'at Islami and its members were the main driving force behind government-imposed Islamization (Shaikh 2008). On February 10, 1979, Zia's Islamization was expressed through laws concerning taxation and punishment (Nasr 1993). These laws included the Hudood (Ar. *Ḥudūd*) ordinances, highly contested laws ostensibly based on Islamic law as laid out in the Qur'an and Hadith. One of the ordinances, the Offense of Zina Ordinance, laid out punishments for *zinā* (adultery) defined as consensual sex between two unmarried adults (Imran 2005). The ordinance demanded that the prosecution of rape be conditional on the act being witnessed by four adult men (Imran 2005). The drafting of the law resulted in rape victims being imprisoned for *zinā* if they were unable to produce four witnesses to testify that they were raped (Imran 2005). Bolstered by the Law of Evidence, which rendered the testimony of two women equivalent to that of one man (Imran 2005), the laws effectively made it impossible for rape cases to be successfully prosecuted.

The discourse surrounding the Hudood ordinances marks the formation of identities that coalesced in support of and in opposition to the implementation of the *sharia* in Pakistan. As the effects of the "Islamic" laws began to be felt, middle- and upper-class women founded the Women's Action Forum in 1981 in order to protect women who had been raped and were subsequently accused of *zinā* (Jamal 2005). Women's mobilization was echoed by a quieter disapproval of the Hudood laws among Pakistan's elite; the Hudood ordinances were politically controversial and were the subject of many disapproving articles and newspaper editorials. Defenses of the law by agents promoting Islamization included that policemen were misapplying it, and that the appropriate response was hardly to repeal the law. In the words of Mufti Taqi Usmani, one of Pakistan's prominent Deobandi *ulamā*, "under no circumstances is it permissible to abolish the punishment which the Holy Shari'ah has laid down" (2006). The Jama'at Islami also vigorously defended the law.

Maulana Maududi had claimed that the establishment of an Islamic state was the ultimate form of worship (Iqtidar 2011). As a result, the defense of the Hudood ordinance and other laws based on Islamic sources became part of Jama'at Islami's members' engagement with God, to the extent that the movement laid aside its founder's gender ideology to promote and protect these laws. Maududi had argued that women belonged in the private sphere, and that their venturing out of their homes was a source of *fitnah* (temptation); over time, during controversies such as those surrounding the Hudood ordinance, Islamists found that they needed to rally female members in order to counter the efforts of Pakistani feminists and female activists (Ahmad 2008). Women began playing roles within Islamic parties as NGO workers and in activism groups (Jalal 2005). In 2002, women affiliated with political Islamic movements even held seats in the (nongender-segregated) Parliament, and argued that once they had accrued sufficient political power they would arrange for parliament to have a separate place for female members (Ahmad 2008). These mobilizations of Islamist women were driven by political expedience, and allowed them to play important roles in public life.

Nonpolitical Islamic movements were not driven by the strategic and pragmatic constraints that framed Islamist engagements with gender and politics, but were unable to divest themselves of these projects; to disclaim "Islamic" laws was tantamount to denying that Islam must play a role in the state. At the same time, defending *sharia*-based legislation or the inclusion of women in the public sphere in order to serve political interests was a distraction from these movements' calls toward a privatized, individualistic piety, and diverted their energy into promoting and defending the Jama'at Islami's agenda, rather than movement-specific goals. The historical legacy in which unpopular *sharia* law has been seen as symbolizing Islam's claim to the State has impacted the options possible to Islamic movements which do not wish to focus on the political arena as a vehicle of reform. These movements include piety movements that seek to transform society by promoting education in Islamic sacred texts and persuading individual Muslims to engage in voluntary (as opposed to legally compelled) transformation.

Islamic Movements, Politics, and the Sharia

I began my research on Islamic movements in Pakistan during the summer of 2007. This was a politically tumultuous time. General Musharraf had been in power since 2001, when he assumed control of the government

by means of a military coup. In March 2007, the general had suspended the Chief Justice of Pakistan on charges of corruption, giving rise to widespread protests by lawyers and other members of civil society. The Red Mosque crisis had also started in early 2007, when the mosque's *madrassa* students began to enforce a campaign of public morality in the capital, closing down alleged brothels and video stores. On July 2007, the army besieged the complex and stormed the mosque, killing at least 106 individuals, including students (Siddique 2008).

These events in and around Islamabad led to a series of ongoing conversations regarding the government, instability, and the political situation. Politics was in the air, along with a palpable sense of unrest. A concern for the political stability of the country united people who were strangers, and it was common for people standing in the grocery checkout line to turn to each other and discuss the events of the day. I found myself in the middle of conversations about the War on Terror, Pakistan's military support of the American troops, and General Musharraf's policies with cab drivers, shopkeepers, and people at the park. "I really do not think this country can survive," confided a tailor as I was giving him fabric for a *shalwar kameeze*. The only place these conversations did not follow me were the sites of my participant-observation research on the Tablighi Jama'at and Al-Huda, two large transnational Islamic movements. Both of these movements promote education in the Qur'an and Hadith as a key element to producing an Islamic society, and both hold weekly recruitment and training sessions for women.

Both Al-Huda and Tablighi sites refused to allow political discussion while lessons were ongoing, although women who were close friends would sometimes come together afterwards in order to talk about events of the day. The Qur'an and Hadith were the focus of these gatherings, and women spent their time in movement space applying these texts to their daily lives and to their interactions with their families and friends. Discussions of sacred texts and conversations about the ways in which they should be applied were common in movement venues. Women parsed texts in considerable detail in order to determine the most correct conduct in any given situation. They applied the texts to the behavior of their families and friends, but did not extend the conversation to the behavior of the government.

Women connected their refusal to talk "politics" to a sense that movement space was too sacred to allow petty political issues to intrude. Nazish, the host of the Al-Huda gathering, once interrupted a preclass conversa-

tion about the Red Mosque siege between some of the other women by saying loudly: "As we studied earlier in the hadith, talking about politics of *Dunyadari* (worldliness) in loud voices is not allowed in the mosque. This place is like a mosque while we study here, so we should also not talk about these things." Thus rebuked, the women in the class lowered their voices before continuing their conversation. When asked if they ever disagreed with each other or the teacher, Nargis, one of the regular attendees said: "No, because we do not talk about controversial matters here. There is no talk of politics or other matters where there is *ikhtalaf* (conflict)."

The Tablighi Jama'at's policy banning political discussions in movement spaces is well known to their members, to the point that it is never explicitly mentioned. Sermons aimed at women discuss personal practice rather than current affairs. Politics are sometimes referenced obliquely, as when the man delivering the sermon of the day said: "Hazrat Musa's (Moses) people said to him, what do we do, the *Firon* (Pharoah) treats us badly, and we have to work so hard, and he abuses us. Hazrat Musa said work on *amal* (actions/deeds). And when they had worked on their *amal* and become regular in their prayers, God made roads for them in the water." This sentence exemplifies the Tablighi Jama'at's attitude toward politics. The government and its actions might make it like "the *Firon*" who abuses the believers, but the reaction of the believers is to work on strengthening their relationship to God, who will deliver them himself when the time is right. The week after this sermon, another speaker said: "It is God's promise: 'Those who work for my religion, my help will be with them.'"

Coupled to these movements' ban on political conversations is their lack of reference to the *sharia* to describe the changes they call on members to make within their lives. As scripturalist movements, both Al-Huda and the Tablighi Jama'at present themselves as rooted in orthodoxy and the authority of Islamic scriptural traditions. Both movements draw extensively on the source material of the sharia—the Qur'an and Hadith—in order to justify and promote their missions of social reform. These movements share a nostalgia for the glorious Prophetic past, which they present as one that can be recovered through a strict adherence to sacred texts (Zeidan 2003, 3). They draw on the sacred texts and the *maqāṣid* of the sharia in order to construct visions of a truly "Islamic" society, and to encourage their members to reform their lives based on these visions.

Most conversations in movement space concerned either the *sharia*—the Islamic code of conduct proscribed by sacred texts and discussed in the

commentary of prominent jurists—or the *maqāṣid* surrounding particular aspects of the *sharia*. Women who join these movements are exhorted to start veiling, withdraw from social events involving music and dancing, such as weddings and other social gatherings, discard their televisions, and to turn their attention to promoting movement goals and embodying personal piety. Implementing these changes requires significant sacrifices; movement members often become slowly ostracized by their extended families, and sometimes have to fight to implement these changes in their own households. Islamic movements motivate women by anchoring these reforms to the Islamic sacred texts. At the same time, neither movement members nor their teachers use the word "*sharia*" to describe the actions they claim these texts require.

Not Speaking of the Sharia

Al-Huda

Dr. Farhat Hashmi founded the Al-Huda Welfare Trust in 1994. Dr. Hashmi holds a PhD in Hadith Sciences from Glasgow University, and her movement's primary mission is to bring about the renewal of an Islamic society by educating women in the Qur'an and Hadith so that they can determine their religious obligations for themselves. Farhat Hashmi has said of Al-Huda "we are not interested in producing scholars … everyone cannot be [a scholar] and they don't need to be … [religion] is for everyone. What is needed is a practical understanding, not an idealist approach" (Mushtaq 2010, 120). A pamphlet published by the organization entitled "Al-Huda: Bridging the Gaps" claims that Al-Huda aims to reconcile the "traditional perception of Islam" with a "logical and contemporary application … in harmony with modern day needs." (qtd in Mushtaq 2010, 120). The movement teaches women to read the Qur'an and Hadith in Arabic, translate these texts, and apply them to a variety of situations.

Women who are interested in learning to read, translate, and interpret Islamic sacred texts can attend classes either at the Institute's formal center, or at home-based classes offered by Al-Huda certified teachers in their own neighborhoods. These home-based classes have allowed the diffusion of Al-Huda's interpretation of Islamic theology into many middle- and upper-class urban Pakistani neighborhoods. Home-based classes are sponsored by the woman who offers her house for the purpose, and the teacher who volunteers to instruct the class. The Al-Huda movement has

a disproportionate influence in Pakistan, considering its relatively recent arrival on the scene, as a result of its outreach to middle- and upper-class women, a category traditionally ignored by the *ulamā* and religious reformers.

Home-based classes were the primary sites of my participant-observation research, and both the students and teachers of these classes articulated a clear connection between their classes and the sacred texts. New students are recruited through the active efforts of their friends who have become involved. Home-based classes are also presented as being an easy way for a woman to learn more about her religion. At one of the first sessions of a home-based class that was recruiting new members, the teacher Laila began the lesson by saying: "There is a hadith: seek knowledge even if you have to go to China. Isn't coming here easier than going to China?" My informant Komal described a recruitment period that lasted several months, in which one of her neighbors took interest in her during a time of domestic unrest in her house: "Maira *Api* (older sister) would take me for long walks. She was taking an Al-Huda class, and she would tell me her entire lesson while we walked." Over time, Komal became interested enough to start taking Al-Huda classes herself.

Once she had joined, Komal found that learning the code of conduct articulated in the Qur'an and Hadith motivated her to make significant changes to her daily life. She and her fellow students in the class at Nazish's house tied their learning in the class to the Islamic sacred texts. Nazish herself once said, "Life is about walking in the path laid out by the Qur'an and Hadith. I feel like before I came to this class, my life was wasted because I wasn't obeying them." Her friend Shazi chimed in "It's not that we did very bad things before, but we weren't consciously trying to follow God's law. Now, when I do something, I think about what the Hadith and Qur'an say about it."

Saba, the teacher of the class, modeled a complex understanding of how to apply sacred texts to everyday situations. In the middle of a conversation about how women in Pakistan are taught religion, Saba said somewhat heatedly: "There are three degrees of required action: *Fard* (required), *Wajib* (necessary), and *Mustahib* (recommended). Why don't people teach women about these?" Saba's own students often draw on these categories of action in order to determine their own religious obligations, and to tell others how to behave. As her students read *Hadith*, Saba instructed them to draw out the principles (*usul*) articulated in the text, and to demonstrate their applicability to ordinary situations. She

frequently exhorted her students to "draw out the principle" of any given text in order to apply it to a variety of situations.

Shazi demonstrated this ability when reciting a hadith on the importance of prayer. After reciting the text of the hadith, Shazi told the class: "Before, I used to delay *dhur* (the evening prayer) so that my sons could have lunch as soon as they came home. Then I realized that cooking for them was not *fard* (required) and prayer was." Shazi's fellow students chimed in with stories about their own prior lack of understanding of how to prioritize their religious duties. Nazish said "Once people understand that something is required, and why, their love for God will make them do it. This is why people don't come to class, because they know they will learn things that they don't want to do."

As Al-Huda women acquire Qur'an- and Hadith-based knowledge, they start transforming their lives and households to confirm to their understandings of these texts. Often, making these changes puts them in conflict with traditional structures of authority; women will discard televisions against the desires of their husbands and in-laws, and start refusing to socialize with men who are not *mehrums*.[2] One of the common observations urban Pakistanis discussing Al-Huda make is that it should be called "*al-Juda*" (the separation) for the way in which it unsettles Pakistani structures of household authority and destabilizes men's control as heads of their households. Al-Huda women also do not see gender segregation as necessary to their faith. Saba once said "I don't think women should work as clerks or shop-girls, because there is too much danger of exploitation, but if a woman is a doctor, or an engineer, and wears a *niqab* (face veil), that is something that makes my heart glad." Those of my research subjects who attended Al-Huda often participated in high-status professions and saw no contradiction between their faith and participating in the public sphere, so long as they were veiled. It is this tendency of Al-Huda women that is often criticized by my nonrevivalist Pakistani research subjects, in the commonly heard phrase "girls these days do *hijab* in order to do fashion." The manner in which middle and upper-class Al-Huda women "do hijab" but continue to actively participate in the everyday activities of their nonrevivalist sisters seems, to outsiders, to mark a lack of commitment to their faith. Al-Huda women counter these accusations by arguing that the idea that women must segregate themselves from society comes from inaccurate readings of the Qur'an and Hadith, and that veiled women are permitted to enter the public sphere.

In addition to learning to translate the Qur'an and Hadith, students in Saba's class challenge the role of the *ulamā* as qualified interpreters of these texts. The following conversation illustrates the ways in which Saba and her students position themselves vis-à-vis the *ulamā*, and the sharia law they create in collaboration with the nation-state:

> Shazi (to Saba): I was thinking of opening a bank account, but I don't understand about Islamic Banking. It seems too much like taking interest to me, if I open a bank account and get money from it.[3]
>
> Saba Taqi Usmani [A prominent Pakistani religious scholar] has said Islamic banking is okay. But there is no need to get fatwa on things that are obviously wrong. Asking for fatwa in these cases is like asking for the *ulamā* to twist things for you. It may be that Taqi Usmani was acting with good intentions, but it is still twisting things. The *ulamā* follow policies, but policies are for the world (*dunya*), not for the *deen* (faith). I have been given a Book (i.e. the Qur'an) and that is enough for me. We don't need *ulamā* now, we need engineers, lawyers and doctors—educated people—young people.

Here, Saba is arguing that the *ulamā* are tainted by their participation in the political process, and that their pronouncements about permitted and prohibited behavior under the sharia can no longer be trusted. The Qur'an, she asserts, is the only guide she needs, and the appropriate interpreters of the text are young professionals.

Al-Huda students often refer to the *maqāṣid-e-sharia* when discussing the reason why particular actions are required or prohibited by the Qur'an and Hadith. In particular, they often discuss the *maqāṣid juz'iyya* (purposes behind specific rulings) in order to explain how divine rulings make rational sense. They also reference these *maqāṣid* when promoting specific religious practices, such as their adoption of headscarves, face veils, long and loose coats concealing their bodies. These changes are tied to specific verses of the Qur'an or passages from the Hadith, and to the benefits women see in their daily lives from obeying those texts. "Once we read the verses on veiling, all of us started to cover our faces," Komal told me. "Before that, Shazi (a fellow student) only wore a *dupatta* (traditional shawl) and I didn't even do that." Transitioning to veiling their faces often caused significant conflict with their families; Komal's family refused to let her come to class for a week, and other women reported that their husbands and in-laws had been very upset. Students often presented their detractors with Qur'an and hadith passages "proving" that

veiling was *fard*. They also argued that veiling their faces had resulted in a number of practical benefits. Komal told me that once she started veiling her face, she stopped experiencing street harassment: "Once I started the *abaya* (long coat), I thought, why do these men (on the street) look at me? What is there about me that they are looking at? After I started reading the Qur'an, I slowly learned that the fault was not theirs, it was mine, that I should cover my face also … now people give me so much respect." Other Al-Huda students also tie veiling to *maqāṣid*, and claimed that they experienced greater "respect" in their daily interactions as a consequence of their decision to veil.

As Al-Huda students are educated in Islamic sacred texts within the movement, they begin to draw on these texts to alter their lives, and develop processes for interpreting the Qur'an and Hadith in order to determine their moral obligations. They master complex and specialized vocabulary related to these texts, and to degrees of permitted and prohibited behavior. While they use the language of Islamic jurisprudence (*fiqh*) to promote religious reforms, Al-Huda women rarely, if ever, use the word "*sharia*" to describe the sacred text–based reforms they promote. In this, they are similar to members of other contemporary piety movements in Pakistan, including the Tablighi Jama'at.

The Tablighi Jama'at

The Tablighi Jama'at is a missionary movement focused on inviting Muslims to correct their religious practices by participating in missionary tours. Maulana Muhammad Ilyas founded this movement in 1926 in response to Hindu purification movements' attempts to convert Muslim communities with syncretic Hindu practices to Hinduism (Van Der Veer 2002). The Tablighi Jama'at's primary goal is to create an Islam that is modeled on the life of the Prophet and his traditions. The movement recruits lay preachers to preach to others and enlist them in spreading religious knowledge. Islamic movements concerned with reform often focus on building a power base, raising money, and educating *ulamā* to combat un-Islamic traditions (Sadowski 1996). Tabligh reverses this formula, asking members for their time instead of their money, and sending them on distant missions instead of trying to keep them geographically concentrated. Over time, the Tablighi Jama'at has grown into a large transnational movement with a particularly strong presence in Pakistan (Metcalf 2002). Female members of the Tablighi Jama'at can participate in tours when accompanied by a father, brother, or husband. These tours

are organized at the central mosque in each city, and are advertised at the *taleem* (education), a weekly gathering for committed Tablighi women.

Taleem draws on Qur'an and Hadith in order to present the mission of the Tablighi Jama'at as divinely mandated, and as the original mission of the Prophet, passed down to his followers. It serves as a venue for recruitment and training; women at the gathering listen to a loudspeaker sermon delivered by a male Tablighi, and spend some time discussing sacred texts among themselves. Sermons often stress the need for active participation in the movement: "Tabligh cannot be learned through sermons. God told the Prophet to go out and do tabligh to learn it. You must also go do Tabligh. The Qur'an says that we are the best *ummah*, because we invite to good and prohibit bad conduct." Sermons like these illustrate the Tablighi understanding, created through particular passages of the Qur'an and Hadith, that the "work" of Tabligh is synonymous with Islam itself. One of my informants, Shams, who had participated in the movement since she was a teenager, told me that she married another Tablighi "for *deen* (religion)" and was seeking out Tablighi spouses for her children in order to "further the *deen*."

Sermons addressed to women emphasize that women are expected to participate in the work as well as men: "Hazrat Bilal did not stop *da'wah* even though he had to suffer for it … women can do *da'wah* too. The Prophet's wife Khadija helped with *da'wah* too, and any of the women who choose can emulate her. The work of Tabligh is not only for men. Women and children are also required to do work." Women often join the Tablighi Jama'at after marrying male Tablighis and are essential to the construction of the "Tablighi household" in which children are taught. Their enthusiasm for the movement also conditions the freedom their husbands have to participate in Tablighi tours. New members often are brought to *taleem* by their husbands who are trying to convince them of the importance of the movement, and the need for both men and women to accept the mission of the movement. Faiza, who had recently married a Tablighi man and been on a three-day tour, told me: "[O]nce you come to *taleem*, you start to see how important this work is."

Tablighi sermons often refer to the "*qurbani*" (sacrifice) required of those who do the "*kaam*" (work), and link these to the sacrifice and work of the Prophet. Sermons draw on the lives of the prophet and his companions in order to demonstrate that they faced great difficulty in inviting others to the faith, and Tablighis are encouraged to see themselves as engaged in the same mission as that mentioned in the hadith.

As they are drawn into the movement, women make significant sacrifices for it. Some go on Tablighi tours and leave their young children with neighbors or family. Many of my Tablighi informants articulate the belief that those Muslims who do not participate in the movement's missionary work are failing to fulfill a sacred trust divinely mandated by the Islamic sacred texts. My informant Kamila sadly observed about members of other religious movements: "we should pray that God will guide them to the straight path. Although many people are making efforts, there is only one true Path."

Although the Tablighi Jama'at appropriates Qur'an and Hadith to present its own mission as divinely mandated, the movement does not question the *ulamā*s role as interpreters of the sharia. Tablighis generally draw on hadith to promote uncontroversial acts of personal piety, which do not challenge the *ulamā*s role as interpreters of the sharia. At one gathering, my informant Razia, a college student who has been on a three-day tour with her father, was reciting from the movement's main text, the "*Fazail-e-Amal*" (The Benefits of Deeds) After reciting a hadith on prayer, she said: "The meaning of this hadith is that the first question on the Day of Judgment will be regarding your prayer. Therefore, we should all try to pray at the right times. Members of the Tablighi Jama'at make verbal gestures of deference to "the respected *ulamā*" in multiple sermons. During an interview, my informant Kamila told me that if she had a theological issue she needed to ask someone about, she asked her husband to ask a religious scholar. Participants in Tabligh see themselves as laypeople that are not attempting to replace the *ulamā* as a source of religious knowledge. Their verbal deference to the *ulamā* is meant to convey that their primary engagement with religion is to invite other Muslims to correct their religious practice. At the same time, part of the movement's message is that the *ulamā* are not necessary for the propagation of Islam, and that lay preachers can reach ordinary Muslims more effectively (Metcalf 1992).

Members of Tabligh bolster this challenge to commonly accepted religious authorities by promoting unique religious reforms. Among these are the exhortations to members to wear "*sunnah*" clothing, and to live in houses free of "western" furniture. As a result, devout Tablighi families look distinctive, and live in houses marked as different. Sermons tie these reforms to the life of the Prophet: "The Prophet demonstrated a plain (*saada*) life, plain house, and plain clothing. We should also do this if we want to be like him on the Day of Judgment. Follow the *Sunnah*,

dress your children in *Sunnah* clothing, even if it is difficult." A number of my informants told me that "*sunnah*" *shalwar kameeze* required a lot more maintenance than the pants and T-shirts generally worn by small children, but that they did it anyway in order to follow the way of the Prophet. The Tablighi Jama'at also threatens the authority of the *ulamā*, and the traditional gender roles they promote, through their insistence that women are essential partners in the active "work" of going to far-flung locations to perform *da'wah*. Women who participate in Tablighi tours often leave behind small children, and this sacrifice is meant to make their tours particularly efficacious. However, the movement's insistence that women confine themselves to the houses of local Tablighi families, and their insistence on strict *purdah*, make the participation of women seem less controversial than it might otherwise be. The Tablighi desire to recreate the "time of the Prophet" also marks itself in women's lives by an emphasis on gender segregation when not engaged in Tablighi tours. Very few of my female Tablighi informants work outside of women-only settings, although a number teach at religious seminaries for girls.

Unlike Al-Huda, the Tablighi Jama'at does not introduce its members to the ideas of *maqāṣid-e-sharia*, or the rational worldly benefits that follow from obeying God's law. Instead, the movement promises that if its members reform their lives in accordance with God's laws, He will help them by providing them with special divine aid. The more unusual or difficult the religious observance, the greater the supernatural aid Tablighis can expect both in their worldly lives and in the "work" of the movement. Members of the movement often share stories related to the divine aid various Tablighis received as a result of particular religious observances; these stories tie success to obedience to principles laid out in the Qur'an and Hadith. As with Al-Huda, members of the Tablighi Jama'at reference the *sharia* obliquely, referring instead to "*sunnah*" and ideas of right and wrong laid out in the Qur'an and Hadith.

Conclusion

Islamic movements are changing the face of contemporary Pakistan; there have been significant increases in the numbers of women veiling in urban settings, and an intensifying discourse related to appropriate forms of religious expression. These changes reflect the persuasiveness of piety movements, and the increasing receptiveness to their message among urban Pakistanis. Among the reasons for the growth of Islamic movements is

their use of the Qur'an and Hadith to authorize and support their mission; most Pakistanis see these texts as authoritative and believe them to lay out the guidelines for pious behavior. Reforms that are anchored to sacred texts are easier for new members to these movements to adopt and defend to potentially hostile extended family and friend networks. At the same time, the Islamic sacred texts have formed the basis of all Islamic reform in South Asia in the nineteenth and twentieth centuries (Robinson 2013), and the use of sacred texts is not a sufficient explanation for the increasing popularity of piety movements in contemporary urban Pakistan.

The *sharia*, which is derived from the Qur'an and Hadith, has a considerable amount of authority and name recognition in Pakistan, and is understood to be the basis of an Islamic moral order. Piety movements could be expected to draw on the *sharia* in order to authorize the sweeping reforms they require their members to make; members of these movements agree that contemporary social organization does not conform to "Islamic" requirements. However, these movements distance themselves from the term *sharia*, while employing its basic concepts, including ideas of *fiqh* (jurisprudence), degrees of permitted/prohibited, and the *maqāṣid* behind religious rulings. I argue that these movements' avoidance of the word *sharia* is an articulation of identity tied to two intertwined issues related to the history of the *sharia* in South Asia: (1) The sharia is understood to refer to a binary legal code rather than an ethical code related to degrees of pious behavior, and (2) invoking the *sharia* automatically creates publics mobilized for or against it based on their relationship to the project of Islamic Nationalism. Both the conceptualization of *sharia* as legal code and the transformation of the *sharia* into political project lead to a situation in which Islamic movements do not reference the sharia while drawing on its basic concepts.

Under British rule, the *sharia* transformed from a flexible ethical code related to degrees of permitted and prohibited, and became objectified in the form of inflexible legal rulings. The resulting laws were then understood to be the essence of Islam, by both Muslim subjects and colonial administrators. Colonial administrators found these laws useful for their resemblance to the codified British law, which they understood how to administer. Their Muslim subjects clung to the codified laws as evidence of their sovereignty and right to govern themselves. In the early 1900s, Muslim Nationalists drew on the idea of a universal "Islamic law" to support their argument that Muslims across India were a community and deserved a nation separate from Hindus. This history resulted in the

conflation of the historical Islamic tradition of jurisprudence, which delineated degrees of permissibility and impermissibility, with a binary legal code implemented by the State. Once Pakistan was created, the role of Islam in the new Nation-State was uncertain. In an echo of the situation in British India, objectified laws based on the Qur'an and Hadith were used to symbolize Islam itself. Once passed, these laws were symbols of Islam's claims to the State, and were evaluated as such rather than on their own merits. The Hudood ordinance is an example of a law which was defended for its status as divine law, rather than its effectiveness as a legal tool.

The Jama'at Islami was at the forefront of these efforts to "defend Islam" and locked itself into a position of antagonism to the Pakistani elite, and to the government. Islam (2015) has argued the Islamists draw on a variety of issues to mobilize publics behind their political project, and use these issues to construct antagonistic frontiers between themselves and "others." Agents unaffiliated with political Islam become trapped behind these frontiers; to divest themselves of the Jama'at Islami's political projects is to side with irreligious Others. In Pakistan, as in the rest of the Muslim world, Islamism's Others are generally educated, well-off, urban, and either indifferent or hostile to the Islamization of the State and society (Islam 2015). At the same time, affirming the Jama'at Islami's agenda by promoting Islamic Law would draw nonpolitical Islamic movements into its antagonisms. These antagonisms would then take up a significant portion of their members' energy and focus, and prevent recruitment from those irreligious Others piety movements are set up to draw members from.

To invoke the *sharia* in Pakistan is to make specific claims about the law, Islam, and its role in the Nation-State. Affiliating with ideas of the *sharia* in contemporary Pakistan calls up preexisting publics mobilized for and against the implementation of Islamic law by the state. Contemporary nonpolitical movements in Pakistan emerge from this history with a steadfast refusal to engage "in politics" by mentioning the *sharia*. Instead, Islamic movements refer directly to the Qur'an and Hadith to delineate pious behavior, and draw on the authority of these texts, instead of referencing the *sharia*. This difference between piety movements and politically oriented Islamic movements is not visible to nonmembers, but shapes members' engagement with Islamic reform, signaling that their primary goal is not the Islamization of the State, but promoting piety in daily life. At the same time, language used by movement leaders, which includes references to *fiqh* (Islamic jurisprudence) and the purposes of specific

laws, makes it clear that this avoidance of the *sharia* is a deliberate tactical decision.

Islamic piety movements' engagement with gender is also free from the pragmatic considerations that guide the Jama'at Islami and other political movements in their utilization of women to create political capital. As such, these movements demonstrate a wide spectrum of approaches to the question of the role women should play in society. Middle- and upper-class Al-Huda women continue to engage in their professions after joining the movement, and most of my older informants had daughters and granddaughters who were educated working women. The women of Al-Huda argue that veiled women are fully entitled to participate in the public sphere, though they do critique aimless "wandering in marketplaces" and needless excursions. In contrast, the Pakistan branch of the Tablighi Jama'at is strongly committed to both gender segregation and veiling, although Tablighi women often expand into new roles as madrassa students and teachers after joining the movement. Despite the differences in their gender ideologies, both movements present women as equal participants in the work of Islamizing society, and give them significant roles to play in their projects. In this, they exceed the rhetoric of Islamist movements, which present the public role of women in their projects as an ideologically undesirable necessity.

Both Al-Huda and the Tablighi Jama'at recruit urban Pakistanis through persuasion; both movements argue that once individuals have become sufficiently pious, society will automatically transform, and laws will become Islamic. Al-Huda in particular focuses on outreach to elite urban women, a category the Jama'at Islami's members are often hostile to at the level of rhetoric. By using the concepts underlying the *sharia* without naming it, these movements avoid setting off connotations many elite Pakistanis associate with ideas of the implementation of the sharia, which has been a primarily top-down project. Referring to the *sharia* by different names helps Islamic movements avoid the history and symbolism tied to political Islam. Avoiding use of the term *sharia* also frees movements to reimagine the law itself; instead of drawing on historically cemented ideas of *sharia* as content, piety movements reimagine *sharia* as process; both Al-Huda and the Tablighi Jama'at are less vested in particular outcomes than in teaching their members methods of exegesis.

These new ways of reading are modeled in regular weekly gatherings, where movement-appointed guides introduce members not only to specific passages from the Qur'an and Hadith, but also to particular ways of

reading. Both Al-Huda and the Tablighi Jama'at demonstrate movement-specific modes of exegesis, teaching their students which aspects of sacred text are important. In Al-Huda, women learn to extract general principles from hadith and then apply them to situations in their daily life. In the Tablighi Jama'at, women learn that the Qur'an and Hadith teach them how to change their lives in order to transform them to resemble those of the Prophet and his companions. Both movements encourage members to incorporate sacred texts into their daily lives, and to use them to persuade friends and family into movement-defined pious behavior.

On the face of it, Al-Huda and the Tablighi Jama'at promote radically different modes of engagement with sacred texts; one encourages women to interpret texts and dispense with the *ulamā*, while the other emphasizes respect for the *ulamā* and adherence to their interpretations. Despite these surface differences, both movements focus on an individualized piety and on small personal reforms. Both Al-Huda and the Tablighi Jama'at detach themselves from ideas of the *sharia* as a national law and return individual choice to their members, stressing that following the divine law is part of a personal religious engagement rather than a matter of compulsion under the law. This focus on a privatized religiosity that is authorized through Qur'an and Hadith, but removed from the baggage of Islamic law, helps explain the increasing popularity of piety-oriented Islamic movements globally.

Notes

1. "Mulla" is a colloquial term often applied to prayer leaders at mosques, but which more loosely refers to men who are seen as holding religious authority.
2. "Mehrum" is a legal category in the sharia that denotes those kin a woman may not marry.
3. Participating in interest-based transactions is commonly understood to be forbidden by the sharia. "Islamic banking" is sharia compliant.

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PART IV

Sharia and Religious Pluralism

CHAPTER 10

You Are Not a Muslim: Ahmadiyya Exclusion and Sharia Interpretation in Pakistan

Wajeeha Ameen Malik

Introduction

This chapter explores the production of Sharia in Pakistan in relation to the treatment of religious minorities. Specifically, this chapter investigates the status of the Ahmadiyya Muslim Community, a revivalist Islamic community deemed heretical and non-Muslim by the constitution of Pakistan. To investigate this issue, I conduct a discourse analysis of Pakistan's second constitutional amendment, declaring Ahmadis as non-Muslim, and Ordinance XX of 1984, with special emphasis on the denial of self-identification for Ahmadis as Muslims. This discourse analysis is supplemented with and supported by ethnographic accounts of first- and second-generation American Ahmadi Muslims of Pakistani origin. The primary purpose of the ethnographic accounts is to demonstrate some of the far-reaching and residual effects of Sharia production in Pakistan as it continues to impact those outside of the borders of Pakistan. Therefore, this chapter also calls upon issues of transnational immigrant perspectives and also comments on the presence of Ahmadi Muslims in the United States, particularly examining how American

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Ahmadi Muslims reflect on the ongoing persecution in Pakistan and their place in American society.

Transnational Immigrant Perspectives

As this chapter examines the experiences of Muslims who are first- and second-generation Americans, it is important to explore the possible frameworks that Muslim immigrants utilize to explain their migration to the United States. Mucahit Bilici frames the American Muslim immigrant experience within a continuum of abodes, each based more or less in Islamic theology (Bilici 2011, 606–618). According to Bilici, *Dar al Harb*, or the "abode of war," frames the United States as an impossible homeland, a place that Muslims cannot inhabit permanently. This strikingly negative perspective of a non-Muslim land is largely rejected by American Muslims today, for the term itself is built on shaky jurisprudence. *Dar al Dawah*, or the "abode of mission," like *dar al harb*, views the Unite States as outside of Islam but, unlike *dar al harb*, accepts it as a land of possible missionary outposts to spread the teachings of Islam. *Dar al ahd*, the "abode of accord," takes one step further and constructs the United States as not just a frontier for propagation but also a friendly and peaceful neighbor. Bilici describes Muslims in this category as "between a protected subject and a full citizen" (ibid., 614). *Dar al Islam*, or the adobe of Islam, commits fully and frames the United States as both homeland and consistent with Islamic teachings. Bilici integrates these four points of the continuum with four prominent immigration and diaspora concepts from Islamic jurisprudence: *hijra*, *ummah*, *dawah* and *jihad*. For the purposes of this chapter, the concepts of *dar al Islam* and *hijra* play a major role in the identity construction of first- and second-generation immigrant Ahmadi Muslims.

For first- and second-generation Ahmadi Muslim immigrants, navigating the ethnic and religious intersections for Ahmadis of Pakistani origin is central to the construction of their identity. Nadine Naber expands on the struggle of young Arab American Muslims who actively construct a framework to negotiate their Arab and Muslim identities. Naber's participants opt for identifying as "Muslim First," an identifier that "contests the hegemonic discourse casting everything that is 'Muslim' in opposition to everything that is 'American'" (Naber 2005, 494). Thus, "Muslim First" is adopted both to contest hegemonic assumptions regarding Muslims and to resist the reigning importance of Arab over Muslim in Arab immigrant communities. "Muslim First" is also evidenced in the experi-

ences of American Ahmadi Muslims. While the persecution of Ahmadis is tightly wound in Pakistan's history, "Muslim First" is adopted by Ahmadis to demonstrate Pakistan's exclusionary version of Sharia. "Muslim First" reclaims Ahmadi Muslim practice that has been rendered un-Islamic and as wrong practice by the government of Pakistan. The following section offers a brief overview of Ahmadi belief structure that Pakistan has declared as outside the pale of Islam.

History and Beliefs of the Ahmadiyya Muslim Community

The Ahmadiyya Muslim Community was founded in 1889 by Mirza Ghulam Ahmad who claimed to be the metaphorical Second Coming of Jesus of Nazareth. His advent also fulfilled a prophecy of the Prophet Muhammad (*salla llāhu ʿalay-hi wa-sallam*)[1] who foretold of a Mahdi or divine guide who would lead Islam out of its declined state and into revival. Mirza Ghulam Ahmad claimed to be a subordinate prophet to the Prophet Muhammad, and his followers believe this to be true. While Prophet Muhammad is considered a law-bearing prophet (i.e., revelation of the Qur'an), Mirza Ghulam Ahmad did not claim to bring a new law but rather a continuation of the same law. Thus, followers of the Ahmadiyya Muslim Community do not consider themselves as adherents of a new Islam, but rather followers of the purest and quintessential form of Islam.

Ahmad resided in a small village in Punjab, India known as Qadian. Ahmad was a prolific writer and penned more than 80 books, hundreds of poems and thousands of letters in Urdu, Arabic, and Persian.[2] Ahmad's main purpose throughout all his writings was to implore all people to establish a meaningful relationship with and belief in God. From this basic principle sprung a whole host of revived Islamic teachings, addressing issues of confusion and contention among the Muslim community and the world at large.

In his final years, Ahmad wrote in his book *The Will* that God had revealed the continuation of his spiritual and religious work through the means of a *Khalifat* (Caliphate) system—a system of spiritual leadership that often emerges after the demise of a prophet (Ahmad 2005). The system of *Khilafat* thus began shortly after Ahmad's demise and continues today. As of now, the Ahmadiyya Muslim Community is under the guidance and leadership of its fifth Khalifa, Mirza Masroor Ahmad. In regard to hierarchy, the Khalifa is the highest office within the Ahmadiyya Muslim Community to whom all other officers within the community are answer-

able.[3] During the partition of Pakistan and India 1947, the Ahmadiyya headquarters shifted from Qadian, India, to Rabwah, Pakistan. As the persecution of Ahmadis mounted in Pakistan, the Ahmadiyya Khalifa entered self-imposed exile in 1984 following the passage of Ordinance XX, a constitutional amendment that declared the Ahmadis to be non-Muslims, and the headquarters was relocated to the United Kingdom.

Other studies have investigated the legal status and history of Ahmadis in Pakistan.[4] These studies document the key roles Ahmadis played in the founding of Pakistan and the multireligious state envisioned by Pakistan's founder, Muhammad Ali Jinnah. Jinnah's vision was steadily lost as the religious right rose to power, influencing the policies of Pakistani Prime Ministers, who often gave in to their demands fearing revolt and rebellion. This potential public discord is the justification offered for the second-class status of Ahmadis in Pakistan: to prevent civil unrest, for if the declaration of Ahmadis as non-Muslims were to be reversed, violence would ensue.

Thus, while the aforementioned studies interrogate the legal and historical context of the infamous Ahmadi question, this study pursues the issue from the lens of speech acts and identity construction of Ahmadis in Pakistan. Other studies have examined the status of Ahmadis through performatives and speech acts, namely Daniel Bottomley's work on the paradoxical legal constructions of Ahmadis in Indonesia (Bottomley 2015). Bottomley demonstrates a small opening for Ahmadis to self-identify as Muslims through government-issued identity cards where citizens select from among six religious categories. Unlike Pakistan where identification documents such as passports specifically demand of applicants who select Islam as their religion to declare Mirza Ghulam Ahmad as a false prophet, Indonesian identity cards do not bear these stipulations nor do they offer a separate category for Ahmadis to select. Like Bottomley, I also draw on Judith Butler's and Lisa Wedeen's work on speech acts and performatives to examine the opening and closing of Sharia interpretation in the Pakistani public sphere via the second constitutional amendment and Ordinance XX (Butler 1997; Wedeen 2008). I propose that these laws enacted "wrong" and "right" practice for Ahmadis that is contradictory to the understanding of self for Ahmadis. This analysis is supplemented with ethnographic work that highlights the experiences of Ahmadis in Pakistan and how those experiences impact them as transnational immigrants to the United States.

Pakistan's Transition to a Sunni-Dominated Republic

The purpose of this section is to provide a brief historical account of Pakistan's transition from its founder's vision as a multireligious state to a Sunni-dominated government. This section focuses on the "Ahmadi question" in the formative transition to dogmatic Sunni Sharia as a dominating influence on the political and legal apparatus of the country. Anti-Ahmadiyya sentiment was forged, however, long before the creation of Pakistan. The religio-political organization Majlis-i-Ahrar-i-Islam, which also opposed the creation of Pakistan, demanded in 1934 that Ahmadis be deemed heretical non-Muslims (Saeed 2007, 136). Organized in India, the Majlis-i-Ahrar was formed by a combination of Deobandi religious scholars and disillusioned members of the former Khilafat movement, thus underscoring their religio-political goals including the freedom to practice and live by the rules of sharia and the distribution of wealth to India's poorer citizens (Awan 2009, 69–73). The position of Majlis-i-Ahrar stood in contradiction to that of Mohammad Ali Jinnah, the prominent Muslim League leader who would later be credited as the founder of Pakistan. Not only did Jinnah support the self-determination of Ahmadis to identify as Muslims, his conception of Pakistan was "based on the primacy of the people; it was non-sectarian, non-denominational, and purely Islamic ethos" (Saeed 2007, 136; Khan 2003, 220). Jinnah's commitment to a multireligious public with no government interference is epitomized in an oft-quoted address delivered to the Constituent Assembly of Pakistan on August 11, 1947:

> You are free; you are free to go to your temples, you are free to go to your mosques or to any other place or worship in this State of Pakistan. You may belong to any religion or caste or creed that has nothing to do with the business of the State … We are starting in the days where there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed and another. We are starting with this fundamental principle that we are all citizens and equal citizens of one State. (Nakhoda 1999)

Jinnah's vision of a multireligious secular state was steadily chipped away in the early years of Pakistan's founding. Declaring allegiance to the Muslim League and defining itself as a religious party, the Majlis-i-Ahrar organization rekindled its demand for declaring Ahmadis non-Muslim in 1949. The Ahrar held conferences in various Pakistani cities denouncing the

Ahmadiyya Community. In addition to oral discourse, the Ahrar, following the scholastic tradition of the Deobandis, published "Ash-Shahab" in 1950, a pamphlet "originally written by Maulana Shabbit Ahmad Usmani, a scholar of Deoband (India) … The Ahrars wanted to establish through Ash-Shahab that the Ahmadiyyas were apostate and the appropriate penalty in Islam for apostasy was death. The pamphlet … idealized the instances of the stoning to death of Ahmadiyyas" (Kaushik 1996, 26). Majlis-i-Ahrar's mission continued in 1953, known as the Punjab disturbances, where the Ahrar and Jamaat-e-Islami, the ruling party of the Punjab province, demanded the declaration of Ahmadis as non-Muslim and the removal of Ahmadis from key governmental positions. Their demands went unmet as the state of Pakistan (namely the central ruling party, the Muslim League) declared martial law over the city of Lahore and upheld citizens' right to freedom of religious thought and conscience. Sadia Saeed dubs this point as "the moment of accommodation" when the Pakistani state legally protected Ahmadis (Saeed 2007, 137). But even here, the Muslim League's motive in protecting the Ahmadis was to oppose Jamaat-i-Islami's bid to govern Pakistan theocratically. Thus, while Ahmadis remained legally protected at this juncture, Jamaat-i-Islami's growing social and political influence indicates a continuation of Majlis-i-Ahrar's anti-Ahmadiyya agenda predating independent Pakistan.

While Majlis-i-Ahrar and Jamaat-i-Islami did not find the legal foothold they sought in declaring Ahmadis non-Muslim in 1953, their demands were eventually met in 1974 when anti-Ahmadi agitation reemerged. By this point in time, orthodox Sunni '*ulama*' (religious scholars) gained considerable influence in persuading politicians and citizens alike of the "inherent danger in affording too much political autonomy to religious minorities whose very existence undermined Islamic theology" (Khan 2003, 225). The Minister of Information Kausar Niazi, a former member of Jamaat-i-Islami, urged Prime Minister Zulfiqar Ali Bhutto to take action on the "Ahmadi question" by posing the issue before the National Assembly. The Assembly unanimously decided to declare Ahmadis as non-Muslim (Saeed 2007, 139).

At this juncture, it is important to draw out the uniqueness of Ahmadis from other religious minorities in Pakistan. Unlike other religious minorities such as Hindus, Sikhs, and Christians, Ahmadis do not identify as minorities in the sense that minority is synonymous with non-Muslim. Even compared to non-Sunni Muslims, Ahmadis remain unique as targets of legalized discrimination. Non-Sunni Muslim minorities, namely

Shi'is, also bear the burns of Pakistan's monolithic, dogmatic Sunni turn. However, this sectarian divide between Sunnis and Shi'is is both bridged when factoring in Ahmadis: both parties unify in their antagonism toward Ahmadis. Notably, both Sunni and Shi'i '*ulama*' participated in the parliamentary hearings that eventually lead to the 1974 constitutional amendment declaring Ahmadis as non-Muslim. However with the "Ahmadi question" resurfaces the perennial issue plaguing the production of Islam in Pakistan: who is a Muslim (Zaman 1998, 691–692).

Discourse Analysis: Ahmadis in Pakistani Law

In 1974, the government of Pakistan ratified the first two constitutional amendments. The first amendment outlined the structure of the state, beginning simply by defining the provinces included in the country. Following this amendment of foundational structure of statehood, the second amendment reads:

> Amendment of Article 260 of the Constitution.
>
> In the Constitution, in Article 260, after clause (2) the following new clause shall be added, namely—
>
> (3)A person who does not believe in the absolute and unqualified finality of The Prophethood of MUHAMMAD (Peace be upon him), the last of the Prophets or claims to be a Prophet, in any sense of the word or of any description whatsoever, after MUHAMMAD (Peace be upon him), or recognizes such a claimant as a Prophet or religious reformer, is not a Muslim for the purposes of the Constitution or law.

Through a mandate of law, the Pakistani government concretely defines the Muslim identity by insistence on the finality of Prophet Muhammad. This insistence on finality of prophethood becomes a caveat to the *Kalima Shahada*, which establishes belief in God and the prophethood of Muhammad. The word *Khatam* or final is in fact absent from *Kalima Shahada*, yet for the Pakistani government inserts this finality in distinguishing Muslim from non-Muslim.[5]

This amendment further performs the theological work of conflating all forms of prophethood. In particular, the amendment mentions: (1) Muhammad as a prophet, (2) any prophet in general, and (3) a religious reformer. Theologically, these are distinct categories/rankings of prophethood, yet in Pakistani law, they are meshed together as one and the same.

This is often the oppositional claim Ahmadi scholars make when explaining the status of Mirza Ghulam Ahmad: that Ahmad claimed to be a prophet subordinate to Muhammad and therefore did not sully Muhammad's status as *khatam* or the final bearer of God's law.[6]

Finally, to highlight the monolithic characteristic of this constitutional amendment, it is worthwhile to note how the ratifiers of the amendment ignored former legal inquiries into the Muslim identity. Following the 1953 Punjab Disturbances, a court of inquiry was established to investigate the issue. The investigation resulted in the Punjab Disturbances Court of Inquiry Report, commonly referred to as the Munir Report (named for Muhammad Munir, one of the leading jurists who conducted the inquiry). As part of the investigation, the inquiry court consulted several leading '*ulama*' to explain the defining characteristic(s) of a Muslim:

> [T]he State will have to devise some machinery by which the distinction between a Muslim and a non-Muslim may be determined and its consequences enforced. The question, therefore, whether a person is or is not a Muslim will be of fundamental importance, and it was for this reason that we asked most of the leading ulama, to give their definition of a Muslim, the point being that if the ulama of the various sects believed the Ahmadis to be kafirs, they must have been quite clear in their minds not only about the grounds of such belief but also about the definition of a Muslim because the claim that a certain person or community is not within the pale of Islam implies on the part of the claimant an exact conception of what a Muslim is. The result of this part of the inquiry, however, has been anything but satisfactory, and if considerable confusion exists in the minds of our ulama on such a simple matter, one can easily imagine what the differences on more complicated matters will be. (Munir and Kayani 1954, 214)

This is followed by a list of excerpts from interviews with the '*ulama*', each of whom responded to the question in a myriad of ways, some defining a Muslim by practice and ritual, others constructing Muslim identity on beliefs. The inconsistency among these responses drove the inquiry court to arrive at the following conclusion:

> Keeping in view the several definitions given by the ulama, need we make any comment except that no two learned divines are agreed on this fundamental. If we attempt our own definition as each learned divine has done and that definition differs from that given by all others, we unanimously go out of the fold of Islam. And if we adopt the definition given by any one of

> the ulama, we remain Muslims according to the view of that alim but kafirs according to the definition of every one else. (ibid., 218)

Thus, the framers of Pakistani's 1974 constitutional amendment resolutely ignored the researched recommendation of the Munir report, settling on a singular identification of Muslim based on literal interpretation of Prophet Muhammad as the last prophet. Perhaps the '*ulamā*' and framers of Pakistan's constitution would have benefitted from a widely circulated Hadith confirming the importance of self-determination in the matter of claiming Muslim identity. A companion of the Prophet Muhammad, Usaamah bin Zaid, overpowered an opponent during a battle. His opponent immediately recited the *Kalima Shahada* but Usaamah bin Zaid killed him believing the man only proclaimed the *Kalima* to save his life. When Prophet Muhammad learned of this, he was very angry and reprimanded Usaamah bin Zaid. The companion said: "O, Prophet of Allah! He was saying these words merely to ensure his safety" Prophet Muhammad replied: "Why didn't you cut his heart open to make sure if he had said it from the core of his heart?" (Sahih Al Bukhari, 612).

A decade following the passage of the second constitutional amendment, then president General Zia-ul-Haq bent to the pressures of the growing right-wing religious parties in Pakistan and issued Ordinance XX, a penal code that describes specific actions and behaviors forbidden for Ahmadis:

> 298B. Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places.
>
> (1) Any person of the Qadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name) who by words, either spoken or written, or by visible representation;
>
> (a) refers to, or addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (peace be upon him), as 'Ameerul Mumineen', 'Khalifa-tul-Mumineen', 'Khalifa-tul-Muslimeen', 'Sahaabi' or 'Razi Allah Anho';
>
> (b) refers to, or addresses, any person, other than a wife of the Holy Prophet Muhammad (peace be upon him) as 'Ummul-Mumineen';
>
> (c) refers to, or addresses, any person, other than a member of the family (Ahle-bait) of the Holy Prophet Muhammad (peace be upon him), as 'Ahle-bait'; or
>
> (d) refers to, or names, or calls, his place of worship as 'Masjid'; shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Section 298B of the penal code codifies into law strict interpretation of a selection of Islamic terminology. While later in the penal code Ahmadis are forbidden from engaging in more general Islamic activities, it is noteworthy that the very first item is a restriction of rhetoric. Furthermore, the choice of terms forbidden for use by Ahmadis is not random. For example, the titles described in section 298B-A are titles of respect that Ahmadis use when referencing the Caliphs of the Ahmadiyya Muslim Community. By invoking orthodox Sunni doctrine and interpretations of Sharia, the Pakistani government laid specific guidelines as to who may and may not use sacred language. The Pakistani government thus claims ownership to Islamic language.

> (2) Any person of the Qadiani group or the Lahori group (who call themselves "Ahmadis" or by any other name), who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

This portion of the penal code can be divided into the two sections: (1) Ahmadis posing as Muslims or followers of Islam and (2) propagation of Ahmadi beliefs. Tackling the first, the penal code assumes a fixed Muslim identity that bears physical, behavioral or verbal markers, for example, to appear as a Muslim, to behave like a Muslim, or to speak like a Muslim. Should Ahmadis be found enacting these markers of Muslim identity, they are punishable via imprisonment and fines. Therefore, in the first portion of the penal code, Pakistani lawmakers construct Islamic identity as action. These actions are considered sacred; hence Ahmadis—considered non-Muslim—are excluded from performing the sacred. The second portion of the code restricts Ahmadi social interaction with non-Ahmadis. While this part of the penal code directly prohibits the act of Ahmadi propagation, it also indirectly condemns Ahmadi beliefs as unsuitable for public knowledge or consumption. Together, both parts of the penal code prohibit indirect (Muslim appearance) and direct (preaching) influence of Ahmadi belief and practice from the public sphere.

The speciousness of Ordinance XX as Sharia-inspired is further underscored by the majority opinion of the 1993 Supreme Court case

Zaheeruddin v. The State that upheld the constitutionality of the penal code. Upholding Ordinance XX was based on two reasons: (1) Ahmadis and their beliefs were offensive to the Sunni majority and therefore bore the potential of disrupting peace in the public sphere, and (2) based on copyright and trademark laws, Pakistan, as an Islamic Republic, was responsible for the appropriate use of Islamic terminology. Addressing the first reason, Ahmadis are again singled out as most offensive to Sunni sensibilities, a reasoning that conveniently ignores any other non-Sunni sect (i.e., Shiites) that challenges this illusive and exclusively or narrowly defined Sunni "majority."

Naveeda Khan explains the ruling's second reason, that like commercial copyrights and trademarks, Islamic epithets are protected and therefore restricted in use:

> The Supreme Court fully understood that copyright and trademark law had an affective dimension that called forth a particular reception and response to its transgression. Ahmadis encroached upon Islam because they could, because neither Muslims nor the state were affectively constituted and legally armed to provide the necessary wall of protection around such objects such that non-Muslims might recoil from them. The judgment, in effect, calls for a proper orientation toward shi'ar-e Allah like that accorded copyright and trademarked goods, for only then would Muslims and the state have the defenses to make impossible the improper appropriation and use of Islamic insignia. More pragmatically, such a legal arrangement provides a positive angle on Muslim claims upon the accretions of their tradition as distinctive markers of their community. Their vague sense of exclusive rights was reconstituted as a proprietary right whose transgression could be easily and quickly demonstrated, judged, and penalized in the court of law. (Khan 2012, 114)

Indeed, by likening the restricted use of Islamic terminology to copyright law, the Pakistani Supreme Court cleanly offered justification for prosecuting Ahmadis as criminals posing as Muslims. However, legal scholarship has challenged this majority opinion by demonstrating the court's fallacious analogical reasoning. The majority opinion cited examples of copyright and trademark law from countries such as the United Kingdom, Canada, and the United States. Amjad Khan explains that the cited laws are applicable only to commercial ventures and are not for granting exclusive rights over religious symbolism (Khan 2011, 509–511). Furthermore, even assuming religious symbols can be protected under copyright law,

what protection is offered to Islamic terminology that is borrowed and/or is rooted in Judaic-Christian theology? As a religious system, the production of Islam and expressions of Islam are not historically static. Thus, the case of Zaheeruddin presents an amalgamation of misguided secular legal analogies and monolithic Sunni theology. Ahmadi bodies and modes of practice suffer the violence of this amalgamation. The case of Zaheeruddin also challenges the imagined religious/secular dichotomy: constriction of Muslim religious identity is defended by an incomplete and fallacious use of secular copyright laws. This offers a cautionary tale for any state: whether claiming to be secular or religious, justice is not inherent or naturally occurring, but rather must be consciously enacted by political and legal actors. The protection and enactment of justice is particularly crucial in the current context of understanding Sharia as produced in Pakistan, for justice is principally the cornerstone of any Sharia supported state. The injustice of the Zaheeruddin case thus indicates the failure of the Pakistani state in upholding religious pluralism in a purportedly "Islamic" state.

Ordinance XX continued and codified the work of the 1974 amendment, securing Ahmadis not only an imposed minority status, but also disenfranchisement via minority positioning. Other legal minorities, such as Christians and Hindus, are not coerced to declare particular beliefs to maintain their chosen and professed religious identity. Ahmadi disenfranchisement is further enacted through election processes and legal documentation, specifically passports and national identity cards. On election registration, passport, and identity card forms, Pakistani citizens are required to declare the founder of the Ahmadiyya Muslim Community, Mirza Ghulam Ahmad, as a false prophet: "I consider Mirza Ghulam Ahmad Qadiani to be an imposter *nabi* [prophet] and also consider his followers whether belonging to the Lahori or Qadiani group to be Non-Muslim" (Ahmadiyya Muslim Community 2002). Therefore, while Ahmadis self-identify as Muslims, they are coerced into choosing between declaring oneself as "Ahmadi" or "Muslim"—these categories of identification are forcibly made to be mutually exclusive by decree of Pakistani law.

At its very core, Ordinance XX distinguishes between "right" and "wrong" practice through discrimination of belief. For an Ahmadi living in Pakistan, this becomes an irreconcilable difference between the public self and private self: what is "right" for the private self (i.e., Ahmadi adhering to Islamic belief and practice) is "wrong" for the public self (i.e., to identify as both Muslim and Ahmadi is unlawful). Together, the

second constitutional amendment and Ordinance XX perform as a speech act: writing to life, and invariably dictating, right practice of the Muslim self. The right of self-determination and self-identification are denied to Pakistani citizens: declaration of the Muslim self is regulated by the state. Religion is state-defined, not a personal affair. Denied their desired identity through the state, Ahmadi Muslims in Pakistan attempt to reconstruct what it means to be an Ahmadi Muslim. This quest for identity even follows those who immigrate to Western nations. Thus, the following analysis interrogates the experiences of first- and second-generation American Ahmadi Muslim immigrants of Pakistani origin.

Ethnography: Transnational Experiences of American Ahmadis

In the previous sections, I closely examined the language of key Pakistani law that discursively restricts Muslim identity via explicit expulsion of a minority self-identified Islamic sect, the Ahmadiyya Muslim Community. In the following section, I extend discursive examination to the experiences of first- and second-generation American Ahmadi Muslims. The quotes that follow are extracted from in-depth, semi-structured interviews. The purpose of these interviews is to provide depth and insight to how transnational Ahmadis contend with the exclusionary and inconsistent Pakistani legislation regarding Ahmadi existence. Furthermore, this ethnography seeks to examine American Ahmadis' presence in the United States as they "look back" on the persecution of Ahmadis in Pakistan. The interviewees explore a number of themes including otherness, gender, education, progress, safety, and cross-national comparisons.

Interviewees shared incidents of discrimination that arose in common social settings. Qamar, a doctor from Pakistan who recently immigrated to the United States, described an incident during his medical studies in Lahore:

> One of my friend's brothers used to live in the same hostel that we were, so we shared the same hostel. He was a staunch anti-Ahmadi. And right when 9/11 happened, he came to our room, me and my Ahmadi friend, and he made a gesture like [participant makes gesture of shooting a gun] and said you're next. So that was very intimidating because 9/11 happened, there were certain extremists who were celebrating 9/11 and then they came to our room and said, you're next, so that's a direct threat, right? So we were

> scared but we didn't tell our parents because they would be more worried. We just kind of started going everywhere together so that we were two and not one … I think it was very faith inspiring to go through that experience. Intimidating as well as faith inspiring.

Some of the comparisons made in this incident are worth noting. Most importantly, the provoker equated Ahmadis—a significant but small minority—to a powerful nation, the United States. The attacker thus embroils the United States—an established "enemy" entity of Pakistan and, by extension, Islam—and Ahmadis in the same comparison, framing Ahmadis as aberrant and dangerous intruders. Incidentally, Qamar eventually finds refuge and a new home in the United States later life, strangely fulfilling this equation of the United States and Ahmadis as one and the same. The final sentence of Qamar's quote also warrants comment, that the experience while "intimidating was also faith inspiring," is a common sentiment in the Ahmadi narrative. The intimidation and systemic persecution Ahmadis face in Pakistan is likened within the Community to the harassment the Muslims endured in the early history of Islam that eventually led to Prophet Muhammad's *Hijra* or migration to Medina. This is one of the unifying points for examining transnational narratives of Ahmadi Muslims of Pakistani origins: that enduring the persecution should inspire strength of faith and that if migration is made necessary, it is performed for the purpose of preserving one's faith. This also calls to attention Bilici's typology of abodes adopted by Muslim migrants. As we will also see later, *Dar al Islam* will be the dominant mode of integration for Ahmadi transnationals.

Sarah, who obtained her medical degree in Pakistan and now resides in the United States, was raised in an upper-class Wahabi family in the Punjab region of Pakistan. She described her family as moderate Muslims but religious. In regard to Ahmadiyyat, before her conversion, Sarah said she was "firm in my mind that Ahmadiyyat was wrong because that's what we were hearing all throughout our lives." Her conviction of Ahmadiyya's wrongness steadily waned while in medical college where she encountered an Ahmadi classmate. After two and a half years of careful study and conversations with her Ahmadi classmate and other religious scholars, Sarah accepted Ahmadiyyat. For Sarah's family, this life-change was wholly unacceptable:

> I think my parents—I think they didn't go out of their comfort zone to do anything, to do something for me. They just said no, Ahmadiyyat, no.

> Anything else, a poor person, a pauper, she's good. But Ahmadiyyat, no. So they didn't even get into a discussion.

Given that Sarah's family was both wealthy and highly educated, it is revealing that they would rather have their daughter join the ranks of the unpalatably poor than join the Ahmadiyya Muslim Community. Sarah's experience with her parents further illustrates how deeply entrenched anti-Ahmadiyya sentiment is throughout all levels of the country, including the upper echelon of Pakistani society. The wrongfulness of Ahmadiyyat is thus maintained and anti-Ahmadiyya ideology is normalized into Pakistani society. Other than scattered and mostly doomed attempts to maintain contact with her mother, Sarah describes that she has been utterly cut off from her family. The attempts of contacting her mother are significant, for Sarah attributes the failure of these attempts largely to the deep-seated patriarchal structure in Pakistani culture. Even after Sarah's father passed away, her brothers restricted contact between mother and daughter. Sarah observes a similar occurrence among converts in the United States as well:

> When we were growing up, my parents never differentiated between who would get the better education, the better clothes, nothing like that. But I think—it's a male society. I've seen even in this society, the girls who become Ahmadi, the American girls, I'm not sure now what's the status but I remember when Mariam's daughter-in-law, when she got married, none of her family was at the Walima. I hope they are better now. But anyone who is a male, even a white male, who becomes Ahmadi, their family is quicker to, you know, patch up with them, as compared to females, no matter white, black or Pakistani.

Sarah observes that women are ostracized more so than men who adopt a new religious practice. Although the consequences are likely magnified in Pakistan for a woman who converts, Sarah's observation draws on the burden placed on the female subject for maintenance of ideology and belief structures. Through this experience, Sarah draws parallels between her condition as a convert in Pakistan to that of Americans who join the Ahmadiyya Muslim Community. As she looks back, Sarah observes cross-cultural similarities where the onus of moral ordering is placed on the female subject.

Sarah's husband, Hassan, further highlights the politicization of religion and beliefs systems to support agendas of discrimination. After discussing the peace and security, they experienced after migrating to the United

States, both Hassan and Sarah noted the rise of "ugly incidents" after the September 11, 2001 attacks. Here Hassan draws a parallel between the minority status of Ahmadis and Muslims in Pakistan and the United States, respectively:

> It's political. The antagonism is really politically funded. The dilemma really is that over there [Pakistan], we face persecution, your bodies are crushed because you call yourself an Ahmadi and they say no you're not a Muslim. And you come here and say everything is going to be fine, but now you are figuratively crushed because you're Muslim. Islamophobia in America, what is it? It's all cultural and political, it's not constitutional, it's not religious. So I think it's the same evil mentality in human beings. There's a secondary gain and you want to find the nearest excuse to cover it up and make it look pretty. So in Pakistan they've used religion to make it look pretty. Here they use free speech to make it look pretty.

Hassan thus points to guises worn by otherwise politically motivated discrimination: the religious veneer of anti-Ahmadi persecution and the purported support of Islamophobia in the States by means of free speech. What does divide Pakistan's Ahmadi persecution and Islamophobia in the United States is the outright criminalization of the Ahmadi Muslim identity in Pakistan. Sarah noted this freedom: "here [America] you could say *Salaam* to anyone, you could tell people about Ahmadiyyat"—basic rights otherwise denied in Pakistan. Indeed, the Ahmadiyya Muslim Community in the United States, much like its sister chapters in other parts of the Western world (e.g., Canada, the United Kingdom, Germany), is active in the public sphere in representing the Community and Islam in general. For example, Majlis Ansar Sultan-ul-Qalam and Lajna Media Watch Team are news media response projects under the auspices of two of the Community's auxiliaries, Majlis Khuddam al Ahmadiyya and Lajna Ima'Illah, respectively (Muslim Writers Guild of America 2015; Lajna Ima'illah, USA 2015). Through these projects, volunteers from the Community publish articles and letters in print news media across the country where they proactively (e.g., illuminating edicts of justice in Islam in conjunction with national holidays such as Martin Luther King Jr. Day) and reactively (e.g., responding to the attacks on *Charlie Hebdo* office) write about Islam. Thus, these projects demonstrate a handful of ways in which the Ahmadiyya Muslim Community engaged with the American public and is establishing its presence as an American Muslim organization.

Nadeem, an attorney born in the United States and whose parents emigrated from Pakistan, recalls the reasons his father decided to leave Pakistan. Nadeem describes a confluence of factors that contributed to his father's decision to migrate, one of which was the increasing persecution of Ahmadis. Nadeem's grandfather was a prominent Imam/religious scholar of the Ahmadiyya Muslim Community, therefore the family felt the brunt of persecution firsthand. In the excerpt below, however, Nadeem describes a particular experience that became the impetus for leaving Pakistan:

> My father, he was a master's student at University of Karachi and he was watching—during his exam season, Neil Armstrong's walk on the moon and the United States was being famously broadcast worldwide—actually that moonshot moment was considered one of the most watched television programs in human history. And Pakistan was very much a part of that. And they were broadcasting live in his classroom. And as he was watching it—he was very strong science background student—most everyone in his class were very vocal that this entire conspiracy was doctored, the video was doctored, the U.S. had not made it to the moon, this was just the West's propaganda and that agitated my father quite a bit to such an extent that he said, I have to—I not only disagree with your sentiments he said to his classmates and professors, I'm going to go to the very country that can accomplish this … The impetus for him to leave was this devolving, deintellectualizing of the country.

Education and knowledge production are revered in the Islamic tradition. While Prophet Muhammad could neither read nor write, he often praised intellectual pursuits and acquisition of knowledge. In one of his widely shared sayings, he noted that every Muslim should acquire knowledge, even if the seeker had to travel to China to obtain it. In the above quote, Nadeem's father was notably frustrated with the deintellectual turn Pakistan was taking. A major feat such as landing on the moon was regarded with the suspicion of conspiracy, as though the very possibility of such advanced scientific progress could only be met with doubt. In a graduate classroom, the environment was thus clouded with doubt; this doubt encroached the open space required for freethinking—the very type of intellectual activity that drives scientific development of a society. In this instance, Nadeem's father witnessed the closing of this space.

It should also be noted that Ahmadiyya Muslim Community is often vilified for its members' educational and professional pursuits. As part of Mirza Ghulam Ahmad's revival of quintessential Islamic teachings, the

Ahmadiyya Muslim Community encourages education; hence, Nadeem's father's growing frustration with the condition of Pakistan. His experience illustrates how anti-intellectualism and anti-Ahmadiyya sentiment overlap as key focal points for conflict and tension. He remained hopeful, however: Nadeem recalls that during his childhood, his father had firmly decided to relocate his family back to Pakistan. While the relocation eventually did not take place, it demonstrates the yearning among Ahmadi Muslim migrants. Yet this imaginary return was also a way to cope with the pain of a doubly symbolic expulsion of Ahmadis from both Pakistani nationhood and religious legitimacy. The history of the Community is so intimately tied to the founding and early development of Pakistan, which renders the position of Ahmadis as adherents of "wrong" practice all the more disconcerting. This is further compounded by the transnational experience. For second-generation immigrants like Nadeem whose ties to Pakistan are through his parents, he feels he can never fully sympathize with the plight of Ahmadis in Pakistan. He has worked many pro bono cases for Ahmadis who have immigrated to the United States from Pakistan due to persecution, and thus is intimately familiar with the narratives.

Nadia, another second-generation American Ahmadi Muslim, shares similar sentiments:

> I've been to Pakistan a few times but my most recent trips have left the biggest impact on my life. One was the summer of 2010 when my uncle was martyred for being an Ahmadi Muslim and practicing his faith in Pakistan. The second was the summer of 2011. My experience from these two trips have left me speechless (in a bad way) and will remain with me for the rest of my life. Being an Ahmadi Muslim, and a minority in Pakistan, is the most terrifying feeling. There are many people in Pakistan who have been brainwashed and are ready to take the lives of minorities for ridiculous reasons. Because of this, it was almost impossible leaving the house. If we did have to leave, there was always a possibility that we might not make it home. It was scary. I even felt in danger while in my home. There were many people who knew we were Ahmadi and where we were residing. This made it difficult to sleep at night. Knowing that our home could be attacked at any time was a feeling I can't explain. I've always felt safe in America and going into a country where my life was so much at risk was eye opening … Although I have been to Pakistan, and have seen the state it is in with my own eyes, I can't sympathize enough. Hearing the stories, watching the news, and reading the articles online are nothing compared to what is actually happening there.

Nadia describes the fear and terror of leaving her family's residence while visiting Pakistan. Although she has felt the violent consequences of anti-Ahmadiyya sentiment through the murder of her uncle, she still feels she cannot fully sympathize as her living reality in the United States is far removed from the realities of Ahmadis in Pakistan. These experiences of second-generation Ahmadi Muslims also demonstrate how deeply colored their perception is of Pakistan due to the oppression of Ahmadis. While claiming that they can never fully sympathize, they remain profoundly affected: Nadeem uses his profession to aid Ahmadi immigrants and Nadia makes it a point to stay abreast of current events in Pakistan with specific regard to Ahmadi communities. Thus, while acculturated into American society, they remain tethered to the condition of Pakistani Ahmadis.

Self-identifying as an "American with familial roots in Pakistan," Nadeem reifies his connection to Pakistan through not only family ties, but also his American upbringing:

> I view Pakistan as a country of hope that can change, that can become the country it once was early on, the one it was founded on, built upon, by the vision of its founder. I'm very hurt by the direction it's taking but I'm vested in it for the rest of my life, till I die. Why? Because the experiences of millions of Ahmadis who are there galvanize me and move me to want to help them and save them from torment and hostility under law … What really kind of keeps me focused, the experience of the founders of this country, based on what we call the first freedom of our country, the first words of the Bill of Rights, the first words of the first amendment are Congress shall make no law respecting an establishment of religion or restricting the free exercise thereof, so it's focused on religious freedom. So I'm enjoying and cherishing that freedom at the same time I am seeing that being forcibly denied from others. So I feel like I'm uniquely situated to appreciate the foundations of America by defending that freedom for others in Pakistan.

Although he is geographically detached from Pakistan, Nadeem remains "vested" in the future of the country from a human rights standpoint. This desire to aid Pakistani Ahmadis who have little power to change their disenfranchised condition is also echoed by Qamar.

> It is my duty and the duty of fellow Ahmadis who live in a secure environment, here in America, to speak for those people back home, which is why I started writing in Pakistani publications and Huffington Post, just to raise awareness of this issue … You're helpless when you're in Pakistan because

> you can't do anything, you can't raise awareness because then you're going to be sought after.

Both Nadeem and Qamar demonstrate the integration of Islamic beliefs and American identity (*Dar al Islam*). While Ahmadi Muslims in America form a minority segment of the greater American Muslim population, they remain committed to raising awareness of the legal, political and social discrimination against Ahmadis in Pakistan.[7] Furthermore, they are committed to supporting the larger American Muslim community by sharing in civic engagement with the greater American society. In addition to media campaigns, as exemplified by Majlis Sultan-ul-Qalam and Lajna Media Watch, Ahmadis are heavily involved in Humanity First, an independent nonprofit humanitarian organization established by the fourth caliph of the Ahmadiyya Muslim Community, Hadhrat Mirza Tahir Ahmad (Humanity First USA 2015). American Ahmadis have also established campaigns such as "Muslims for Life," a blood drive in honor of the September 11, 2001 victims (Ahmadiyya Muslim Community 2015).

For recent immigrants to the United States, the impact of Ahmadi persecution takes time to become fully realized. Qamar comments on the psychological state of new Ahmadi immigrants:

> When I came here, I think I was still in the same mentality, that it's kind of normal that I don't call myself Muslim openly, it's kind of normal that I don't say Salaam openly, that's okay, that's how it is, that's life. But then when I got used to freedom again, here in the U.S., I realized that it's really—there's a lot oppression back home, a lot of persecution back home, you don't realize it. It doesn't have to be physical, it's psychological oppression and persecution, and people have adapted to this new normal but they don't know what they're missing which is complete freedom of speech, freedom of worship, freedom of religion, which we enjoy here in the United States. So when I got back to my senses and I realized that was not normal, this is normal.

Qamar's sentiments echo those who live under constant duress to the extent that it is normalized, never questioned or criticized. Thus, while Ahmadis are aware of their legal, religious and sociopolitical status in Pakistani society, their exclusion from society is so deeply entrenched that they themselves are unaware of psychological impact this exclusion has had.

Concluding Remarks

As evidenced in this chapter, the enactment of the second constitutional amendment and Ordinance XX placed Ahmadis in a paradoxical position, rendering it impossible for them to be full citizens of a country where the legal interpretation of Sharia on right and wrong practice places them outside of the identity they claim. Furthermore, Ahmadis act as a foil for the Pakistani Muslim, whereby through speech acts, non-Ahmadi Muslims can determine their "Muslim-ness" by foiling Ahmadis. The rigidity of Pakistan's legislation is further compromised by the longstanding tradition of discursive dialogue and religious pluralism in Sharia production since the founding of Islam. However, in the case of the Ahmadiyya, modern Sunni orthodox scholars misappropriate Sharia concepts to fit their hegemonic agendas. In his examination of the fatwas levied against Ahmadis in Indonesia accusing Ahmadis of apostasy, Najib Burhani states:

> Traditionally, the punishment of apostasy is upheld or emphasized because apostates have created social and political disorder in society. And in the case of group apostasy, as allegedly committed by the Ahmadiyya, it was often considered as "bughāh" (rebel) against the Islamic society or state. However, the studied six fatwas do not emphasize this issue. Instead, all of them indicate that the reason why they charge the Ahmadiyya with apostasy is their belief in the prophethood of Ghulam Ahmad … The main reason for charging apostasy to the Ahmadiyya in this fatwa and all other five fatwas is the heretical beliefs of the Ahmadiyya. It is from here this article argues that the issuance of fatwas against the Ahmadiyya is intended mostly to sustain Sunni orthodoxy. (Burhani 2014a, b, 299)

Thus, the traditional reason for apostasy punishment—causing civil unrest—is absent in the case of Ahmadis in Pakistan. While the allegation of Ahmadis causing public disorder is frequently levied by the Pakistani state in defending anti-Ahmadiyya legislation, there is little evidence to support this premise. Rather than instigators of public disorder, Ahmadis have been victims of emotional, material and physical violence. Even if apostasy appears to be a harsh allegation for Ahmadis, the gentler, pluralistic concept of *dhimmis* is also unfounded when considering the case of Ahmadis. Extensive accounts of *dhimmis* in Islamic law, including Anver Emon's work, are all premised on a basic condition: the protection of *dhimmis*. Thus, even if Ahmadis are perceived as a religious minority in Pakistan, they lack protection by the state as evidenced by the mental abuse and physical violence Ahmadiyya communities have endured. Most

importantly, however, is the very crux of my argument throughout this chapter: the core reason why neither of the aforementioned theological categories fully captures the status of Ahmadis is because they are forcibly—and therefore inaccurately—applied to individuals and a community that self-identifies as Muslim. Rigid and hegemonic renderings of Muslim identity are imposed on claimants of said identity.

The Ahmadi identity comes at a crossroads when Ahmadis migrate to the United States. As evidenced in the ethnographic portion of the chapter, American Ahmadi Muslim transnationals continue to work and negotiate their identities, reconciling narratives of "looking back" to the persecution in Pakistan and "looking forward" to establishing their place in the United States. The narrative of ongoing persecution in Pakistan bears heavily on how Ahmadi Muslims of Pakistani origin integrate into American society, largely adopting the perspective of *Dar al Islam*. For Ahmadis, practice of Islam is not exclusive to the homeland, but rather is perfectly available to transplant in a new home. From a structural perspective, this transplanting of Islam is realized through the Community's numerous religious and civic campaigns appealing to the American Muslim community and the greater American society.

In some respects, the condition of Ahmadis in Pakistan can be likened to that of Muslims in certain European countries, particularly if examined through the lens of the secular versus religious. In *Is Critique Secular? Blasphemy, Injury and Free Speech*, Asad et al. problematize the singular meanings of secular as free and open to criticism and religious as dogmatic and monolithic. They argue that claims for secularization can appear to be just as dogmatic, and religious societies can also foster creativity and criticism. France, for instance, purportedly enacted the ban for secular reasons while Pakistan persecutes Ahmadis for religious purposes. As examined by James Frankel in this volume, Chinese Muslims are also forced to negotiate religious identity and practice based on governmental restrictions. Each of these countries curbs religious practice using seemingly oppositional ideologies, yet the impact is the same: to ostracize the Other.

Asad Ahmed's work underscores this false dichotomy between the secular and religious for he claims that the liberal, secular machinery of the Pakistani legal system allowed for Ahmadi discrimination. Ahmed's work is further supported by the findings of Amjad Mahmood Khan's challenge of the use of secular laws to uphold anti-Ahmadiyya laws: in the same space, both the secular and religious are manipulated for discriminatory ends. Through the machinations of parliamentary hearings held under Bhutto's regime, eventually leading to the 1974 constitutional amendment, and

the several court cases and appeals by Ahmadis only to be denied by the Pakistani judiciary, the case of Pakistan demonstrates that liberal projects, too, are fallible and mislead by similarly rigid Sharia projects. In the Munir Report, however, we find a vestige of Pakistan's promised liberal state—an apparatus slowly dismantled by growing Sunni dogmatism. What makes the case of Pakistan today so alarming are the exclusionary interpretations of Sharia within which this dogmatism of the Muslim identity is perpetuated, thereby muting any creative or critical guidance different, and more just, productions of Sharia could offer.

Notes

1. Translated as "may peace and blessings of Allah be upon him" is an Arabic salutation of respect accorded to the Prophet Muhammad. Although textually unmarked, the reader should assume this salutation in future references to Prophet Muhammad.
2. For a synopsis of each of Ahmad's books: http://www.alislam.org/library/links/80-books.html.
3. Although an "elected" position, members do not campaign to be elected as *Khalifah*. The Ahmadiyya Muslim Community emphasizes the divine guidance in selection of the next *Khalifah* immediately following the demise of the previous one: "*Khilafat* is a holy trust which is entrusted to a pious member of the Jamaat through election. Islam further teaches that although the *Khalifah* is appointed through elections, in fact, God Almighty is guiding the members towards election of a righteous and able person as *Khalifah*." Karimullah Zirvi, *Welcome to Ahmadiyyat, the True Islam*, Qadian: Nazarat Nashr-o-Ishaat, 2011, 301.
4. See Amjad Mahmood Khan, "Persecution of the Ahmadiyya Community in Pakistan: An Analysis under International Law and International Relations," *Harvard Human Rights Journal* 16 (2003): 217–244; Sadia Saeed, "Pakistani Nationalism and the State of Marginalisation of the Ahmadiyya Community in Pakistan," *Studies in Ethnicity and Nationalism*. 7 (2007): 132–152; and M. Nadeem Ahmad Siddiq, "Enforced Apostasy: Zaheeruddin v. State and the Official Persecution of the Ahmadiyya Community in Pakistan" *Law and Inequality: A Journal of Theory and Practice* 14 (1995): 275–338.

5. See Naveeda Ahmed Khan, Muslim Becoming: Aspiration and Skepticism in Pakistan. Duke University Press, 2012, 92. Khan confirms the centrality of Prophet Muhammad as a core prophetic figure necessary in religious aspirations on both micro and macro levels in Pakistan. Khan claims that despite Pakistan's spiritual founder Muhammad Iqbal's insistence on decentralizing the prophetic figure from Islamic spirituality in the forthcoming state of Pakistan, the Pakistani state later co-opted Iqbal's disagreement with Ahmadiyya theology (as Ahmadis emphasize the need for spiritual leaders actualized in the form of prophets, *Khalifahs*, etc.) to propel anti-Ahmadiyya laws. Whatever Iqbal's true stance on the Ahmadi question, Khan's claim underscores the Pakistani state's co-option of revered religious thinkers to disenfranchise and criminalize Ahmadis.
6. Contestation over the interpretation of *Khataman Nabiyyin* (finality of prophethood) is at the core of persecution of Ahmadis. The Qur'anic verse in question reads: "Muhammad is not the father of any of your men, but *he* is the Messenger of Allah and the Seal of the Prophets" (33:41). Drawing on various Sharia sources, Ahmadi doctrine differentiates the Prophethood of Prophet Muhammad and Mirza Ghulam Ahmad where the former is known as *Tashri'i Nabuwwat* (law-bearing prophethood) and the latter claimed to be a subordinate or *Shari'ah-i-Muhammadi* (follower of Muhammad's law). See Karimullah Zirvi, *Welcome to Ahmadiyyat, the True Islam*, Qadian: Nazarat Nashr-o-Ishaat, 2011, 281–285. Most importantly, Ahmadis cite several Ahadith indicating the door of revelation and Divine communication would remain open even after the passing of Prophet Muhammad: on the authority of A'ishah, wife of Prophet Muhammad: "Say that he (The Holy Prophet) is *Khataman Nabiyyin* but do not say that there will be no Prophet after him" (Commentary, *Durr-i-Manthur*, Vol. 5, p. 204; *Majma' Baharul Anwar*, Vol. 4, p. 8).
7. Two entities of the Ahmadiyya Muslim Community in the United States, Majlis Ansar Sultan-ul-Qalam (The Muslim Writers Guild of America) and Lajna Media Watch, regularly publish news and op-ed articles that respond and clarify the pervasive misrepresentations of Islam in American media. Both organizations also call to attention the condition of Ahmadis in Pakistan. American Ahmadi Muslims have steadily brought the issue of Ahmadi persecution to the forefront of the American political landscape, culminating in the estab-

lishment of the bipartisan "Ahmadiyya Muslim Caucasus" in Congress to further investigate the global Ahmadi discrimination. See Washington Time's article: http://www.washingtontimes.com/news/2014/feb/27/small-muslim-offshoot-to-get-own-caucus-on-capitol/?page=all.

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CHAPTER 11

Anwar and *Maqasid*: Forging a Muslim Democracy

Charles Allers

Introduction

Though currently incarcerated and stripped of political office, Anwar Ibrahim (1947–) has been the leader of *Pakatan Rakyat*,[1] Malaysia's first bonafide political coalition to oppose the long-standing incumbent government[2] since the country's inception in 1963. Pakatan, which dissolved in June 2015 partly as a consequence of Anwar's arrest, had been composed of the Democratic Action Party (DAP), the Malaysian Islamic Party (PAS), and the People's Justice Party (PKR), the last of which Anwar had served as a member of parliament until early 2015. As Malaysia's demographics reflect a diverse citizenry and is composed of a majority group (61 percent) of Malays (or *bumiputra*—"sons of the soil"), followed by Chinese (25 percent) and Indian Malaysians (8 percent), Pakatan is a multiethnic and multireligious composition of three parties that reflects the nation's demographics. While Anwar is Malay, and thus a follower of Islam,[3] his moral convictions expressed through his Muslim faith have been fashioned in this pluralistic environment; a time period which spans over 50 years and a corpus which, in the twenty-first century, has forged

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in him a moral code that transcends race, religion, and nationality. It is in this context that the chronicle of his articulation and application of sharia merits inclusion in this anthology.

Yet how did he arrive at this point? How did a person, once described as a "Muslim activist," evolve to become an Islamic statesman and tireless proponent for the efficacy of Islam's contribution to universal values? This chapter seeks to chart his course, first by utilizing his chronology to document the influences and experiences in his life. This will be accomplished through both primary and secondary resources, including interviews by the author, speeches given by Anwar over the past ten years and source material written about both him and Malaysian politics, particularly as it pertains to pluralism. With this information, the author will then offer a detailed survey of Anwar's articulated thoughts regarding what can be phrased in his vernacular as "the moral imperatives of a civil society."

Anwar Ibrahim: Chronology

As previously mentioned, the environment of Anwar's birth and upbringing was one of pluralism. Two major historical factors contributed to this: the region's precolonial and postcolonial heritage. In regard to the former, the nature of the country's proximity to precolonial transoceanic trade routes drew nonnative settlers to Malaysia (previously known as Malaya) from several nearby regions. As to the latter, colonial British hegemony created an influx into Malaya of both Chinese and Indian inhabitants, who were recruited to harvest and manage the production of raw goods (rubber, palm oil, and tin) for the purpose of international trade. Because of this, by the 1930s, native Malays had become a statistical minority in their country, a trend which they opposed after the Second World War, and which ultimately led to autonomous statehood (1957) and the eventual formation of Malaysia (1963).[4]

Thus, Anwar was born in an environment of pluralism and one that was in transition by virtue of his postwar birth (1947), and consequently, his early life straddled both indigenous and colonial worlds. On the one hand, his parents, fervent supporters of Malay nationalism, became active politically in the fledgling United Malays National Organization (UMNO) and Anwar's earliest formal education centered on Malay and Islamic curriculum. On the other hand, he had access to English literature in his home, and his early academic and religious schooling would soon transition into colonial institutions that emphasized English culture and language.

This transition occurred first in Anwar's hometown, the village of Bukit Mertajam in the northern state of Penang, and then culminated into his enrollment in the elite Malay College of Kuala Kangsar (MCKK), a six-year preparatory school that was a precursor for university attendance.

Life at MCKK also exposed him again to a pluralistic environment, for while in the process of earning a classical western education, he became aware of the combination of his surroundings and his sense of identity, both as a Malay and as a Muslim. As a Malay, Anwar soon realized that his western educational environment was wholly different than the life he would experience off campus in the rural Malay community as the average Malayan was generally left behind in the colonial, modern paradigm. And as a young Muslim, he began to challenge what he felt was the static and more ceremonial faith of his parent's generation. Islam had immutably knitted itself into Malay culture in the fifteenth century by virtue of trade from India and the Middle East, yet colonial hegemony had stunted Muslim influence in Malaya well into the twentieth century. As Anwar empathetically witnessed life outside the school's manicured parade grounds, he began to rethink his beliefs, intent on possessing a more modern, pragmatic, and humanitarian articulation of his Islamic faith. Ultimately, this reorientation would lead to activism as he and other concerned students banded together to teach religious classes and serve those less fortunate in the local community. As the school tolerated this behavior, a spirit of moderation not unnoticed by Anwar, he departed the school for the University of Malaya in 1967, having formed strong religious convictions and a penchant for service and activism, and was beginning to evidence strong leadership skills.

These characteristics were brought to bear while his university experience matured as Anwar eventually became the leader of two pivotal student organizations. The first, the National Union of Malaysian Muslim Students, emphasized the rights of Muslims; the second, the University of Malaya Malay Language Society, emphasized the rights of Malays with the university academic setting. John Funston notes that through his leadership, these groups became "political forces to be reckoned with" (Allers 2013, 144), and both were a component of larger domestic and international movements at the time. Domestically, in 1969, Malaysia erupted in communal violence as ethnic, religious, and political tension between Chinese Malaysians and Malays spurred riots that killed several hundred people in Kuala Lumpur, the nation's capital. It was also in the late 1960s that Muslims worldwide began to embrace the postcolonial milieu and

reassert Islam as *al-din* ("an all-encompassing way of life"[5]). Anwar and many Malays were caught up in both movements, and as Anwar graduated, he was on the vanguard of these twin concerns that combined to create an active resistance to the status quo. Regarding Anwar's Islamic activism, Zainah Anwar, who wrote on this period in *Islamic Activism in Malaysia: Dakwah Among the Students*, credited Anwar as the person "who could be credited with founding the Islamic revival movement in Malaysia" (Zainah Anwar 1987, 11).

This resistance coalesced in the early 1970s into what became the Muslim Youth Movement of Malaysia (*Angkatan Belia Islam Malaysia*, or ABIM), with Anwar ultimately becoming its president. ABIM, which grew quickly from 150 to 11,000 members between 1971 and 1974, spurred young Muslims to pursue the twin goals of sincere faith and altruistic action, or "Islamization from within" (Hunt 2009, 597), but was also critical of what they felt was a government that turned a blind eye to the plight of the Malay community. Though his parents were still participating in the government, Anwar unabashedly criticized UMNO and the *Barisan Nasional* (which also consisted of parties representing Chinese and Indian Malaysian interests) and stated in 1974 that he was part of a more youthful and "new leadership that is more vocal, more critical and more conscious of contemporary national and world affairs" (Anwar Ibrahim 1974, 82). Befitting his commitment to activism, during this time, Anwar spent almost two years behind bars as a result of student riots at the University of Malaya.

While ABIM continued in their vocal political views and their service to the Malay community, Anwar began to evolve from a national to an international leader within Islam. In 1973, along with his representation of Malaysian youth to a United Nations advisory group, he also partook in the leadership of both the World Assembly of Muslim Youth and the International Islamic Federation of Student's Organization. It was in this dual environment that Anwar's leadership shaped ABIM, for his exposure to international leaders influenced ABIM in such a way that the organization's philosophy was more open to a vast array of ideas and influences. As many in the Islamic community embraced a more strident form of Islam as the 1970s progressed, which emphasized Islamic statehood and the implementation of sharia (typified for example, in the Iranian Revolution in 1979), Anwar was more measured in his approach. This was due in part to the embrace and maturation of his faith, along with his diverse upbringing in a country that was struggling to bridge the gap from communalism

to pluralism. Thus, as ABIM and Anwar matured, both expressed a desire for what Seyyed Vali Reza Nasr states was a "'Malaysian Islamism' that would borrow from outside ideas, but would adapt them to the needs of Malaysia" (Seyyed Vali Reza Nasr 2001, 91–92). As the decade passed, Anwar and ABIM met the complex challenges of Malaysia with a more universal, inclusive, and empathetic approach, one which many Islamic groups in the country would not consider.

It was also at this time that the Malaysian government appropriated Islam as a solution in assisting the plight of the Malays and for the building of a more harmonious nation. In 1981, Mahathir Mohamad (1925–) was elected as Malaysia's fourth prime minister. Like Anwar, Mahathir had been a vocal advocate for both Malay rights and Islamic efficacy in the late 1960s. Unlike Anwar, his criticism was from within the government, and he was eventually dismissed from office for his views in 1969. However, by 1972, he had returned to a government post and gradually climbed the political ladder through the 1970s while still ardently committed to his views. Upon his installment as prime minister, he enacted a policy called the "Inculcation of Islamic Values," and ultimately, he won the respect and allegiance of Anwar Ibrahim, who left ABIM (which at the time constituted 30,000 members) and joined UMNO in March 1982. Anwar capped this transition a month later by running for, and winning, a Member of Parliament (MP) seat from his home state of Penang.

Though criticized by many for embracing the system he had once opposed, like Mahathir, Anwar rose quickly through the ranks of UMNO. In September of 1982, he was elected president of the party's youth division and a year later was appointed to oversee the Ministry of Culture, Youth and Sports. These posts were followed by a ministry leadership of agriculture (1984), education (1986), finance (1991), and ultimately culminated in Anwar possessing the second highest office in the country—deputy prime minister (1993). Along the way, Anwar presented himself as an advocate for both Islam and the Malays. While supporters will maintain that his agenda was one that advanced his ideals for the betterment of the nation, critics assailed him for advancing this agenda at the cost of non-Muslims. For example, on a pair of occasions in the 1980s, he was accused by Chinese Malaysian leaders of instituting Islamic principles on a national level at the expense of non-Muslims. Both viewpoints concerning his political agenda during this time appear to have merit—a time that can be deduced as one of the maturation of an individual enmeshed in a life of politics.

Nevertheless, it was also during his tenure as deputy prime minister in the mid-1990s that Anwar lengthened (or some would say returned to) his more inclusive and pluralistic nature. In 1995, at his alma mater, he hosted a symposium entitled "Islam-Confucianism: A Civilisational Dialogue," where he implored his audience for the necessity of altruism and humanitarianism in both Malaysia and Asia at large as a counterweight to the profound period of economic growth the region was experiencing—at the time dubbed "The East Asian Miracle." These thoughts coalesced in book form with the publication of *The Asian Renaissance*, which was released in 1996. Here Anwar encouraged the region to transcend rather than eliminate their differences (Esposito and Voll 2003, 621) and, in the process, create a societal context that championed justice and tolerance, regardless of ethnic or religious composition. It was during the mid-1990s that Anwar appealed to the *maqāṣid al-sharīʿa* for the first time publically, stating that Islam promoted "humanitarian and compassionate values … which are of universal and perpetual significance" (Anwar Ibrahim 1996, 119). The *maqāṣid al-sharīʿa*, or "the objectives of the sharia," was an Islamic legal discipline which served as a guideline for best practices relative to the public interest, and with his articulation of it in *The Asian Renaissance*, Anwar's more universal moral and political worldview had begun to crystallize.

However, during this time, Anwar slowly transitioned from an advocate of Mahathir's polices to an in-house critic of his prime minister. As the nation made strides to modernize, the aforementioned strong economic growth gave birth to endemic corruption, and this began to marginalize a large swath of the Malaysian citizenry. In 1997, when the "Asian Financial Crisis" enveloped the region, Anwar stood against the status quo policies embraced by both government and business, and after a lengthy, irreconcilable struggle, he was ultimately accused of criminal activity and sacked in September 1998. Accused and arrested, dubiously, of both fraud and sodomy (the latter which was illegal in Malaysia and inimical to the conservative Muslim), Anwar was tried and convicted, and ultimately spent six years in solitary confinement. As many in the nation protested, Anwar's plight became a lightning rod for a call for reform, or *Reformasi*, in the country as he cast a vision for the future which emphasized justice, economic fairness, and democracy and eschewed corruption and cronyism. *Reformasi* engulfed Malaysia on and off for the better part of three years and altered the nation's political landscape as Pakatan Rakyat would emerge from it. To the consternation of the government, the grass-roots

passion of *Reformasi* perpetuated, and was ameliorated only by the worldwide events of September 11, 2001.

Though behind bars, during this time, Anwar continued to maintain his influence, albeit remotely, in the political affairs of those groups and constituents who opposed the government's agenda. While the incumbency held to more colonial, communal policies that emphasized race and patronage, the opposition evolved to become the voice of Malaysia's postcolonial, more pluralistic environment. And respective to the terrorist attacks perpetrated on 9/11, Anwar was also one of the first internationally known Muslim voices to speak publically about the tragedy. In his article, entitled "Who Hijacked Islam?," published in *Time* magazine in October 2001, Anwar addressed several issues regarding the event, two of which were "the lack of political and social freedom" (Allers 2013, 155) within the setting of political Islam and the need for a more moderate form of the faith to evidence itself in contemporary affairs, particularly in light of the extremism (and perceived extremism by the west vis-à-vis many Islamic groups) which motivated the perpetrators.

By 2003, Mahathir had resigned as Malaysia's prime minister and replaced himself with Abdullah Badawi (1939–). It was during the new prime minister's first year in office that Anwar's sodomy conviction was stunningly overturned by the Federal Court. Abdullah, who like Anwar was a native of Penang, was seemingly more moderate than Mahathir, both politically and religiously, and may have seen Anwar's release as a way to reinforce the perception of the prime minister's more moderate persona and as an efficacious decision that would assist the country to move past the tumult of *Reformasi*. Upon his release, Anwar spent time recovering from a back injury incurred during his arrest and then began to speak internationally about the post-9/11 world. Ultimately, his thoughts were codified in an essay in the *Journal of Democracy* in July 2006. Entitled "Universal Values and Muslim Democracy," Anwar integrated the themes of moral and political freedom as being normative to Islam and universal for all humanity, saying "there can be no question that several crucial elements of constitutional democracy and civil society are also moral imperatives of Islam: freedom of conscience, freedom of expression, and the sanctity of life and property … these are passions that motivate not only Muslims but people from all civilizations" (Anwar Ibrahim 2006, 12). These moral and political themes, many of which embody the *maqāṣid al-sharīʿa*, have become the bulk of Anwar's political platform to this day.

Due in part to published accounts such as this, many felt Anwar was on a trajectory to become the world's principal spokesperson for the moral and civic virtue of moderate Islam, and this speculation coalesced in December 2006 when Anwar was asked to take the place of Kofi Annan upon his departure as the United Nations Secretary General. Though he declined the offer, Anwar continued to be a voice on the world stage, yet at this time, he reengaged in the Malaysian political scene and promptly focused the bulk of his efforts there. Though temporarily barred from running for office as the result of his prior conviction, Anwar was the de facto leader of his party and its coalition, Pakatan Rakyat, which consisted of a diverse cross-section of indigenous Malaysians who resided on both the peninsula and on the eastern islands of Sabah and Sarawak.[6] He actively campaigned for the coalition across the country with the stated intent to move Malaysia from ethnically based communalism to what Gordon Means stated in *Political Islam in Southeast Asia* was "a more open democratic system based on merit, equality, human rights, fairness and multi-cultural tolerance" (Means 2009, 357). When Federal Elections were held in 2008, Anwar's message of moral imperatives and representative government resonated with the diverse voting public, for prior to election day, not only did voters begin to assemble in mass protests against the incumbency, but the electorate also eventually handed the Barisan Nasional its worst national losses since the country's independence some 60 years earlier, losses which precipitated the premature departure of Abdullah from office. Following the election, two related events occurred. First, Anwar was cleared to resume his formal political career, and with the resignation of the Member of Parliament who held his former seat in Penang—his wife, Wan Azizah Wan Ismail (1952–)—Anwar earned an overwhelming victory in the subsequent by-election. Second, not long after the victory, Anwar, for a second time, was accused and indicted for criminal sexual behavior by a second complainant. In what was termed "Sodomy II," Anwar once again became embroiled in Malaysia's federal court system.

While Sodomy II transpired, Anwar remained resolute in his call for moral and political change in Malaysia and continued his duties as both an international voice and a domestic opposition leader. Within Malaysia, while few believed the nature of the charges against him, many took to the streets in numbers far larger than those prior to the 2008 elections, continuing in protest against the government's inertia in deal-

ing with a changing, more pluralistic political landscape. The protests, dubbed *Bersih* (Malay for "clean," and relative to the electoral process), which numbered anywhere between 50,000 and 300,000 participants, occurred in both 2011 and 2012 and were concurrent with the beginning of the Arab Spring in the Middle East and North Africa and its similar call for a more transparent, democratic, and just political rubric. In between these domestic and international protests, Anwar's trial continued: in January 2012, he was found not guilty of sodomy on the basis of a lack of sufficient evidence, yet this acquittal was overturned in 2014, forcing Anwar to appeal the decision. This time period was notable for two other events: first, in January 2013, the political opposition staged "The People's Uprising Rally," which drew an estimated 150,000 people to Merdeka Stadium in Kuala Lumpur. Second, four months later in May, the nation's 13th General Election was held, and with the results, Pakatan deprived the ruling coalition of a statistical majority of the popular vote—a milestone that had not occurred in over 40 years. In the election's wake, political commentators stated that Pakatan had also been successful with a growing multiethnic urban community in Malaysia who were desirous of Anwar's promise for democratic reform and good governance. Nevertheless, despite continued protests and rumors of election fraud, the ruling coalition has maintained its power, and ultimately, in February 2015, Anwar's conviction appeal was denied, and he was jailed for five years. And though Pakatan Rakyat officially dissolved its seven-year affiliation in June after the Islamic PAS cut ties with the Chinese DAP, by late September, a new coalition had formed under the name *Pakatan Harapan* (Coalition of Hope). The pact consisted of PKR, DAP, and the newly formed *Parti Amanah Negara* (The National Trust Party), and one of the coalition's first orders of business was to name Anwar as the new opposition's choice for prime minister (Zulkifli Sulong 2015).

Anwar Ibrahim and the Maqāṣid Al-Sharīʿa

In this brief survey of Anwar's life, it can be inferred that the principles of the *maqāṣid al-sharīʿa* (or *maqāṣid*) have become the core of both Anwar Ibrahim's political philosophy and his practical theology. As recently as November 2014, Anwar referenced Islam, democracy, and the *maqāṣid* while presenting the keynote speech on "Islam and Democracy: Malaysia

in Comparative Perspective" at the Center for Democracy, Development and the Rule of Law at Stanford University. He stated:

> It is true that there is no democracy without freedom. And detractors are quick topoint out that on this alone, Islam is left at the starting blocks when measured againstdemocracy. According to them, this is because there is no freedom in religion. This issimply not true. Within Islam, freedom of faith is one of the five higher objectives ofthe divine law, the maqasid al-sharia, together with the protection of life, familyand lineage, intellectual well-being, and property rights. (Anwar Ibrahim 2014a, b)

Anwar's embrace of the *maqāṣid* is quite possibly due to the nature of its recent reemergence as a topic of discussion within political Islam, for the study and application of it in the twentieth century was initiated approximate to the time of Anwar's birth. In his 2013 article "The Relevance of a Maqasid Approach for Political Islam Post Arab Revolutions," Halim Rane cites Muhammad al-Tahir Ibn Ashur's *Maqasid al-Shariah al-Islamiyah* (1946) as the first "major contribution" (Halim Rane 2013, 496) to the concept of the *maqāṣid* in the modern era (and is a text that Anwar references in *The Asian Renaissance*). Though the most well-known articulation of the *maqāṣid* has most often been tied to Abū Isḥāq Ibrāhīm b. Mūsā al-Shāṭibī (d. 1338), the genesis of the discussion within Islamic theology can be traced initially to the tenth century and has been highlighted in the writings of such well-known Muslim thinkers as Abū Ḥāmid Muḥammad al-Ghazālī (1058–1111), who, according to Mohamed El-Tahir El-Mesawi, codified the *maqāṣid*'s taxonomy as "the realization and protection of five necessary things; namely, religion, life, intellect, progeny and property" (Mohamed El-Tahir El-Mesawi 2012, 189–214). Add to this the work of al-Shāṭibī, who adopted Ghazālī's concept in his *al-Muwafaqat* and added to it the nature of the *maqāṣid* as a philosophy that embodied more than solely Islamic principles, but universal ones, saying that the five universals were "a matter of agreement not only among Muslims, but also among other communities" (Mohamed El-Tahir El-Mesawi 2012, 189–214). Additionally, El-Tahir states that a key component in al-Shāṭibī's epistemology regarding Islamic jurisprudence was a utilization of the principles of the *maqāṣid* as it applied to "new cases and new situations" (Mohamed El-Tahir El-Mesawi 2012, 189–214). To al-Shāṭibī, the universal and moral nature of the *maqāṣid* could be applied in such a way that

it was uncoupled from any static cultural context, and therefore became transcendent in the quest for the *maqāṣid*'s intended application—the universal best practices relative to *maṣlaḥah*, or public interest. El-Tahir states that this epistemology gave space for the Islamic concept of *ijtihād* ("independent reasoning"), which Ahmad Kazemi-Moussavi says was also a methodological necessity in the mid-twentieth century for Ashur (Asham Ahmad 2011, 275), and, like the *maqāṣid*, *ijtihād* was a discipline which Anwar appropriated as a youth as a means to deepen his quest for a more relevant understanding of his faith (Anwar Ibrahim 2009a, b, c, d). As *ijtihād* stands in contrast in Islamic theological history to *taqlīd* (or "the unquestioning acceptance of the legal decisions of another without knowing the basis of those decisions") (*Encyclopaedia Britannica Online*), along with the dynamism of *ijtihād*, the universal nature of the *maqāṣid* was of benefit for *maṣlaḥah*, of which Halim states political Islam rediscovered in the late twentieth century:

> The work of al-Shatibi made a more profound contribution to the theory ofmaqasid by focusing on the concept of maslaha (public interest) as an approach toovercoming the rigidity imposed by literalism and *qiyas* (analogical reasoning).The maqasid theory of al-Shatibi is based on an inductive reading of the Qur'an inorder to identify the higher objectives, intent and purpose of the Qur'anic verses,which are understood to preserve human interests in both this world and the next.In practical terms, however, the maqasid received little attention from Islamic juristsand legal scholars in the seven hundred years since al-Shatibi. (Halim Rane 2013, 494)

Halim postulates that the revival in the mid-twentieth century of the moral practicality bound up in the *maqāṣid* was indirectly caused by European colonial rule and the western modernism which the *ummah*—or worldwide Islamic community—experienced. In response to this paradigm shift, as mentioned, a generation of Islamic political parties emerged who were largely antagonistic to western ideology and who sought to combat colonial hegemony through the establishment of an Islamic state based upon the legal stricture of sharia as a code of law. However, while gaining support in the 1980s and early 1990s, the momentum they achieved eventually waned (Halim Rane 2013, 490–491). Of this application of sharia, in 2014, Anwar stated "the idea that the whole of Islamic law can be reduced

to the application of criminal laws and penalties is an aberrant approach that (had) proliferated in the modern period" (Anwar Ibrahim 2014a, b).

In the place of these initial Muslim politicians, a second generation repositioned Islam far more effectively in the context of both modernism and pluralism, and has found success largely through the rediscovery and implementation of the compassionate values of the *maqāṣid* over the more juristic aspects of sharia. Vali Nasr, writing in 2005 in the *Journal of Democracy*, concurred, stating that these second-generation Muslim politicians were "the growth medium of Muslim democracy," and thus had "discounted the classic Islamist claim that Islam commands the pursuit of a sharia state (Seyyed Vali Reza Nasr 2005, 13). This shift in the understanding and facilitation of the *maqāṣid* in the mid-to-late 1900s within political Islam was both observed and integrated by Anwar, for he wrote in 1996 in *The Asian Renaissance*:

> Until recently, the theory of maqasid al-Sharia, formulated around six centuries agoby the jurist Ibrahim ibn Musa al-Shatibi, in his *al-Muwafaqat* had been relegated toobscurity. In essence, his jurisprudence entails attaching priority to the promotion ofhumanitarian and compassionate values of Islam which are of universal and perpetual-significance, as opposed to the literalism and legalism of mainstream Islam as a staticreligion which has lost its relevance. (Anwar Ibrahim 1996, 118–119)

With these convictions, which were grounded in his political experience, Anwar observed that this understanding and application of the *maqāṣid* was part of a growing acceptance within the religious community in Southeast Asia, particularly Indonesia, and almost 20 years later, Halim documents its evolution in the region (along with that of Turkey). Halim claims that within the region "second generation Islamic-oriented parties developed comprehensive political programs, appealed to broad and diverse constituencies, and emphasized Islamic values, principles and objectives" (Halim Rane 2013, 491). In fact, one can argue the case that though Anwar is certainly identifiable as one of the more notable figures within the second generation of Muslim politicians, his methodology, which defines this space, began much earlier—as early as the mid-1970s, as evidenced through his successful leadership of ABIM. Osman Bakar, who attended MCKK with Anwar and served alongside him in ABIM as the organization's secretary

general from 1977 to 1981, told the author that Anwar leadership's of ABIM in the 1970s did not become

> ideological in the sense that it identified with just one particular stream of thoughtor philosophy—it was open, and that openness was a contribution of Anwar'sdevelopment at that time. He himself tried to be identified, connected with the leadersof Islamic movements of all kinds. ABIM leaders … read writings on Islam written byscholars and Muslim leaders of many shades … in that openness we learned manythings. (Osman Bakar 2009)

Thus, the first formal representation of what John Esposito and John Voll call Anwar's "acceptance of a more universalistic Islamic mission" (Esposito and Voll 2001, 188) was evidenced by the formation of ABIM. The authors state Anwar "began his career as an activist in the movement for affirming Malay rights and identity," yet eventually, "one of the most important dimensions of Anwar's vision of al-din was his acceptance of the composition of Malaysia's diverse religious and ethnic nature" (Esposito and Voll 2001, 188). Additionally, Judith Nagata, who wrote about ABIM at the height of the group's influence in *The Reflowering of Malaysian Islam*, surmised that ABIM lacked ethnic (or religious) chauvinism (Nagata 1984, 95), and Vali Nasr, writing in *Islamic Leviathan: Islam and the Making of State Power* (Seyyed Vali Reza Nasr 2001, 91–92), concluded that Anwar's ability to think pluralistically in the early 1970s placed him ahead of those who espoused a brand of more radical Islam. Anwar Ibrahim has been at the forefront of both party and movement in the late twentieth and early twenty-first century and has utilized the moral, universal nature of Islamic principles found in the *maqāṣid* in a way that is contributing positively within a cosmopolitan political setting, rather than ostracizing or disenfranchising Islam from it.

Anwar and Contemporary Politics

So, from a practical level, what is the composition of Anwar Ibrahim's Islamic political theory? The author's research has pinpointed two primary expressed convictions: Anwar's articulation on Islam as it relates, first, to democracy and, second, to pluralism. In regard to Islam and democracy, for the better part of the past two decades, Anwar's approach to expressing democracy as normative within Islamic praxis has been, first, to

present what he believes to be the prevailing attitude that the term "Muslim Democracy" is an oxymoron and then offer his rebuttal to that presumption from the vantage points of both Muslim theology and contemporary politics. Thus, much like the previous quote from his address at Stanford, he has often framed his speeches on political Islam with words such as these taken from a 2010 speech in Washington, DC, entitled "Islam and Democracy in Southeast Asia":

> The general notion is that Islam and democracy is essentially at loggerheads. It is said, or alleged by some, that while democracy liberates, Islam incarcerates; democracy delivers people from the bondage of tyranny, Islam sends them back. They also say that democracy liberates by granting freedom of conscience, while Islam enslaves by imposing ideological rigidity and robbing people of their individuality and free will. And as if all this is not bad enough, we are told that while democracy gives us dignity, Islam gives us violence and terror. (Anwar Ibrahim 2010a, b)

Theologically, Anwar has attempted to deconstruct the notion that the principles of democracy originated during the time of the western enlightenment period, and thus are proprietary to the *sitz im leben* of the seventeenth and eighteenth centuries and its subsequent western development. Quite often, over the years, Anwar has referred to the writings of John Locke (1634–1704), specifically his *Two Treatises on Civil Government* (1689), where Locke states:

> Every man is born with a double right. First, a right of freedom to his personwhich no other man has a power over, but the free disposal of it lies in himself. Secondly, a right before any other man, to inherit, with his brethren, his father's goods. (Anwar Ibrahim 1996, 52–53)

As these principles closely parallel those of the five moral imperatives of the *maqāṣid*, Anwar has concluded that Islamic philosophical thought regarding moral, humane governance has therefore predated what he stated in 2006 were the "Lockean ideals that would be expounded centuries later" (Anwar Ibrahim 1996, 52–53). Similarly, in 2014, he also compared the moral composition of the *maqāṣid* with the codification of the natural law (or inalienable rights) of "life, liberty and the pursuit of happiness" as defined in the United States' Declaration of Independence. In referencing humanity's rights as it pertained to the eighteenth-century inception of

the American political experience, he analogized its ethic as comparable to his understanding of al-Shāṭibī's fourteenth-century *maqāṣid* (Anwar Ibrahim 2014a, b). And on a broader scale, Anwar has also couched these principles of good governance within the general, universal metanarrative of Islamic theology. In speaking on political Islam, quite often he has referenced the Prophet Muhammad's Farewell Pilgrimage (or *Hajja al-Wida*—"O Mankind, your blood, your property and your honor are as sacred as this Holy Land") as an altruistic foundation promoting the "moral imperatives of Islam" germane to representative government (Anwar Ibrahim 2014a, b). Additionally, on numerous occasions, he has highlighted the experience of nineteenth-century Muslim scholar Rifa'a al-Tahtawi (1801–1873), who Anwar recounts as visiting Paris in the 1800s and discovering the parallels between the western enlightenment definition for "freedom" and the Arabic word '*adl* (justice). Using these two examples of the sanctity of human life and human autonomy, Anwar has declared the composition of democracy as normative to Islam and "one of the divine attributes in Islam and a prevailing concern of Muslim scholars and theologians since time immemorial" (Anwar Ibrahim 2009a, b, c, d). Hence, within Anwar's theology is a rubric that he has often referenced as "the rule of law" (Anwar Ibrahim 2006), or "the institutions of civil society" (Wajahat Ali 2010).

Second, in drawing from political history, like Halim's references to Indonesia and Turkey, over the years, Anwar has repeatedly referenced these nations as examples of the effectual compatibility of Islam and democracy. In 2007, he said both were "widely regarded as a test case demonstrating harmony between Muslim politics and democracy" (Anwar Ibrahim 2007) as both had to overcome periods of either secularism or military rule, both had rather nascent histories of a full commitment to democratic principles (Indonesia in 1998 and Turkey in 2002), both had created inclusive space for their Muslim heritage in the democratic process, and neither were forced to democratize by virtue of imposition from the west. In 2009, Anwar stated in Cairo that both nations were examples where "we have seen Muslim people, when given the chance, cast their vote in support of governments that restore freedom, tend to the common good and pursue economic policies that are more fair and equitable" (Anwar Ibrahim 2009a, b, c, d). And in late 2014, reflecting on the political dynamism of the Arab Spring during a keynote speech at the "World Forum for Muslim Democrats" in Malaysia, Anwar cited Indonesia and Turkey as examples of a political Islam that "can be seen to be more honorable in

terms of applying principles of good governance … and vibrant democracy" (Anwar Ibrahim 2014a, b). Hence, in support of Anwar's case advocating "Muslim Democracy," Sven Alexander Schottman (who actually credits Anwar with initiating this term in *Islam and the Question of Reform*) states that "Muslim Democracy" is both normative and viable in contemporary society, for it

> recognizes that a thorough interpretation of Islamic societal values includes theapplication of religious values and principles at the level of state. But it rejects callsfor the establishment of a "theocratic" polity. Instead, its advocates view a liberal-democratic order as the embodiment of the ideal Islamic state, using the social values contained in Islamic law and theology as arguments for the further democratization of the existing order. (Barlow et al. 2008, 46–47)

After his articulated convictions of the compatibility between Islam and democracy, the second principle that has been emphasized in Anwar's ideology is that of pluralism, of which his thoughts can be divided into two frames of reference: Anwar's understanding of pluralism in the context of Islam and in the context of politics (specifically, Malaysian politics). In general, Anwar's early life can be construed as one in which fertile ground existed to produce a tolerance for viewpoints other than his own. This article's brief overview of his life has sought to highlight the pluralistic nature of his upbringing, his maturation, and his environment. As far as his environment, Anwar's world included the ethnic and religious plurality of Malaya, the nature of the transition from colonial rule to independence in post–Second World War Malaysia, and the nation's modern, ongoing political transition from communalism to pluralism. Relative to his upbringing and maturation were the multicultural diversity of his state, Penang; the informal educational influence of his parents; the formal education provided by MCKK in his formative years; and his multifaceted activity within politics, which included those outside the prevailing government at the time (on the one hand, ABIM, and on the other hand, Pakatan Rakyat) and that which was subsequently within the prevailing government (UMNO and its coalition, the Barisan Nasional).

Thus, in regard to Anwar, pluralism, and Islam, Esposito and Voll state that by the mid-1990s, Anwar's Islamic conceptualization became more "global and inclusive" (Esposito and Voll 2001, 191) and was couched specifically within the Asian economic and cultural florescence of the time. Anwar stated in *The Asian Renaissance* that the region's vision for the

twenty-first century was one whereby "it should become a greater contributor to the advancement of human civilization" (Esposito and Voll 2001, 193) and one where Asians should embrace a "transcending tolerance" of its diversity. This *masyarakat madani*, or "civil society," was reflective of both Asia and Malaysia's diversity, was a pluralism which Anwar felt was faithful to the tenets of Islam, and one which became "the key to his understanding of the future global role for Islam and Asia" (Esposito and Voll 2001, 196). Anwar's most succinct expression of this at the time was *convivencia* (or "coexistence"), the medieval period in Spain where Muslims, Jews, and Christians lived interdependently. Initiated in *The Asian Renaissance*, convivencia is a term to which he has often returned, particularly since his post-2004 release from incarceration, as an example of the possibility for peaceful coexistence in a bifurcated post-9/11 world. Also, by the late 2000s, his transglobal worldview presented Islam as a proponent of universal values. Anwar's worldview set Islam on par not only with other religions in their reverence for human freedom (which he classified in 2009 as a universal value "which all religions share") (Anwar Ibrahim 2009a, b, c, d), but also with what he said in 2010 was the singular, higher truth of all religion: "from God we were sent forth and unto God shall we return" (Anwar Ibrahim 2010a, b).

In the context of politics, Anwar's foray into international relations in the early 1970s (through the documented international groups) is a fixed point to demarcate his international initiation into political pluralism. Additionally, a core principle of *The Asian Renaissance* was the necessity for a tolerant, respectful, and mutual engagement between cultures—what he has chosen to call "civilizational dialogue." However, possibly the largest footprint of Anwar's pluralistic political orientation lies in the *Reformasi* movement and the political change which continues reverberate to from it as a diverse cross-current of Malaysians united to protest the government's communal policies and advocate greater freedom and representation. Though Anwar was incarcerated during this period, his influence was part of the creation of the country's first viable, noncommunal alternative to the incumbent coalition, and upon his release, Anwar's pivotal leadership of Pakatan Rakyat has made national history in the 2008 and 2013 General Elections by creating new space for an opposition party within a genuine two-party system. Regarding the contemporary multiracial, multireligious political environment in Malaysia, in 2014, Anwar continued to promote the idea that universal concepts, such as those in the *maqāṣid*, could be a "common platform founded on morality that will cement the

multiplicity of groups with diverse doctrines" (Anwar Ibrahim 2014a, b). Citing John Rawls' (1921–2002) theory of "overlapping consensus," where citizens with competing worldviews find group consensus alongside those unlike themselves through a common agreement of moral principles (Wenar 2013), Anwar believes that democracy within pluralism "requires compromise, and groups with different agendas and views must be prepared to enter into dialogue setting aside immediate differences" (Anwar Ibrahim 2014a, b). One need go no further than Anwar's leadership in Pakatan to see this premise in action, for while the coalition's Malay-Muslim party (PAS) was strongly in favor of implementing *ḥudūd* laws, the opposite was true for the non-Islamic party (DAP).

Conclusion

In conclusion, what can be gained from Anwar's perspective on his Islamic faith and his articulation of it within what has become a global, pluralistic environment in the twenty-first century? This can be sorted in three parts: the practical, universal, and democratic nature of Anwar Ibrahim's Islamic core values.

First, Anwar's Islamic taxonomy can be described as one of practicality, which pursues "the spirit of the law" expressed in the five universal attributes of the *maqāṣid* rather than the "letter of the law," or an overemphasis upon a strict definition of sharia and the establishment of an Islamic state. To this, Osman Bakar stated in 2011 that, "the sharia without its universal dimension, particularly without its *maqāṣid*, would lose much of its appeal as an ethical-legal system that transcends time and space that comes from its claim as the last divine law to be revealed to humankind" (Osman Bakar 2011, 288).

Halim's description of the first and second generation of Muslim politicians in the twentieth and twenty-first centuries clearly delineates these two approaches regarding the application of sharia. In regard to the first generation, which affixed themselves to the letter of the law, M.A. Muqtedar Khan, in his 2001 article "The Political Philosophy of Islamic Resurgence," classified this approach as one where "blind imitation and institutionalized conservatism" (Muqtedar Khan 2001, 213) triumphed over function. Anwar, who arguably was pioneering the philosophy of the second generation of Muslim politician as early as the 1970s, expressed his conviction in 2010 that a proper Islamic doctrinal approach must be one that evolves. In saying "the sharia was never cast in stone,"

he appealed for a dynamic approach to a quest for "the realization of the eternal principles of the Divine Unity which in turn springs forth from the Divine Laws" and stated, conversely, that "ideological rigidity" still existed within Islam and thus remained as "a stumbling block to progress and reform" (Anwar Ibrahim 2010a, b). As al-Shāṭibī couched his understanding of the *maqāṣid* on the inductive method of understanding the Qur'an and applying its truth outside of cultural context with the utilization of *ijtihād*, so has Anwar. Writing in "Islam and the West: Muslim Voices of Dialogue," Esposito and Voll stated in 2000 that, "in Anwar's view, Islam is essentially a pragmatic religion whose real strength and dynamism was in the continuing revitalization provided by ijtihad" (Esposito and Voll 2003, 620). Hence, the dynamic, revitalizing power of *ijtihād* is one which Muqtedar states is sufficient "to revitalize Islamic beliefs by contextualizing them—by relating Islam to the immediate existential conditions of Muslims" (Muqtedar Khan 2001, 212), and is an underpinning of Anwar's pragmatic understanding of Islam's practical theological nature, bound up in the spirit of the *maqāṣid* , in the twenty-first century.

Second, Anwar has consistently displayed both the universal and efficacious nature of the ethos of Islam relative to the universal principles of the *maqāṣid*. Within Malaysia, for example, Robert Hunt, in his 2009 article "Can Muslims Engage in Interreligious Dialogue," stated that Anwar has been pivotal in fostering a dialogue in which "a new narrative is emerging for Malay-Muslims to follow" (Hunt 2009, 604) since the early 1970s. Hunt stated that this new narrative

> appears to accept the reality that Malay-Muslim identity must be shaped in relationship to not only the reality of religious pluralism in Malaysia, but the role that these ethnic and religious others have played in creating the *Malaysian* narrative in which the Malay-Muslim narrative must be located. It appears that with the pursuit of an Islamic identity directed toward achieving egalitarian democracy and universal justice, a Malay-Muslim identity is emerging that will allow Muslims to engage in interreligious dialogue over issues of concern to all the citizens of a religiously plural society. (Hunt 2009, 604)

Thus, Anwar's story of a gradual personal and political embrace of pluralism, rooted in his understanding of Islam, is one that Esposito

and Voll stated was reflective of "a changing mainstream of Malaysian politics and identities" (Esposito and Voll 2003, 618)—a change which remains active, based upon a postanalysis of the 2013 General Election (Lau 2013). Moreover, like Anwar's societal leadership within Malaysian Islam in the 1970s, in regard to Malaysian politics, the authors describe Anwar as being "a significant force in causing these changes, an almost prototypical 'activist intellectual,' articulating new conceptualizations and paradigms, fulfilling the classic role of the intellectual in times of great historic changes" (Esposito and Voll 2003, 618).

In addition to the narrative of Islam in its relationship with Malay/Malaysian culture, Anwar has helped spur dialogue within the international Islamic community as it navigates the cultural and religious vicissitudes of the twenty-first century. On the one hand, Anwar has been an important voice in the narrative that seeks to understand, integrate, and harmonize both technological and cultural change within an Islamic worldview. Along with Prime Minister Mohamad Mahathir (and to a lesser degree, Prime Minister Abdullah Badawi), Anwar viewed change as an opportunity, rather than a threat, as other seminal Muslim thinkers have before him, such as Jamāl al-Dīn al-Afghāni (1839–1897), Muḥammad ʿAbduh (1849–1905), and Rashīd Riḍa (1865–1935). On the other hand, especially in a post-9/11 twenty-first century, Anwar has sought participation for Islamic sociopolitical values in the narrative that is becoming, in large part, a global community. Hence, his premise of this global narrative rests upon universals: the universality of humanity and its religions, both of which, in his thinking, esteem the common universal principles of freedom, justice, and human dignity and which are the elementary components of the *maqāṣid*.

Finally, in the realm of international Muslim dialogue, one area in which he has arguably provided the most proactive leadership has been within the narrative of political Islam as it pertains to democratic government. Within this category, Anwar's has been consistent in his commitment to incorporating his core values, rooted in his Islamic faith, on a global level, and it is within this emerging narrative that Islam's holistic, pragmatic value rooted in the *maqāṣid* has begun its integration within global politics. Robert Hefner says this has been instituted via changes which have occurred in twentieth-century human society (i.e., the transition from an agrarian to a modern society), where this transformation has led to the emergence of the desire for "a freer and more egalitarian public order" and one where Muslim democrats have looked "to their religion to provide some of the terms for this new public ethic" (Hefner

2001, 495, 499). Vali Nasr concurs and states that values such as "ethics, morality, the family, rights, social relations, and commerce" (Seyyed Vali Reza Nasr 2005, 14) have become the means to an end in the narrative of Islam and democratic politics, and a viewpoint, according to Muqtedar, which is a crux of Anwar's religio-political philosophy: democracy as a catalyst to establish Anwar Ibrahim's conceptualization of an Islamic state, however, a state which consists of "a just and moral and virtuous order" for all its citizenry (Muqtedar Khan 2001, 221). Relative to this philosophy, Muqtedar Khan (2001, 221) has listed Anwar's contemporaries as former Turkish Prime Minister Necmettin Erbakan (1936–2011), Tunisian Rashid al-Ghannushi (1941–), and Sudanese Hassan al-Turabi (1932–), and Esposito and Voll equated him to Indonesian Abdurrahman Wahid (1940–2009) and former Iranian President Seyed Mohammad Khatami (1943–). Their commonality with Anwar is the notion that

> all (have demonstrated) that there is no essentialist or monolithic Islam or Muslim society. All may share a common faith, at times articulate an Islamically inspired worldview, and use Islam as a source of legitimacy and mobilization. Still, their visions, goals, and strategies are shaped as much by specific historical and socio- political contexts as by faith. (Esposito and Voll 2003, 638)

Looking back, as this second generation of Muslim politicians grappled with political ideology at the end of the twentieth century, Vali Nasr states that they created a legacy that embraced the pragmatic and universal nature of the *maqāṣid* by "crafting viable electoral platforms and stable governing coalitions to serve individual and collective interests—Islamic as well as secular—within a democratic arena whose bounds they respect, win or lose" (Seyyed Vali Reza Nasr 2005, 13–16). As the Muslim world continues to grapple with the expression of a constructive political ideology at the beginning of the twenty-first century (as expressed in the advent of the Arab Spring), Halim believes the *maqāṣid*, to which Anwar Ibrahim has adhered for over 50 years, may be political Islam's best way forward. He states:

> [G]iven the demands on the emerging Islamic political parties of the Middle East, North Africa region to respect and reflect Islamic values and principles while developing policies that deliver on governance, economic growth, employment opportunities and protection of basic rights and freedoms, the maqasid approach should be expected to become more widely embraced. (Halim Rane 2013, 520)

Therefore, since Anwar Ibrahim's understanding of *maqāṣid al-sharī'a* has been forged through his own growth both spiritually and politically, along with—among other events—the seismic political shifts of a post-colonial Malaysia and a post-9/11 world, his is an abstraction of Islamic modernity which this anthology has sought to elucidate.

Notes

1. Or "The People's Alliance."
2. The government coalition is known as *Barisan Nasional* or "The National Front."
3. According to Article 160 in the Malaysian Constitution, to be Malay is to be Muslim.
4. The country of Malaysia was established in 1963 with the unification of Malaya with Singapore, Sabah, and Sarawak. Due largely to Chinese–Malay tension, Singapore was excluded from Malaysia in 1965.
5. The term most often associated with al-din in Southeast Asia is *dakwah*.
6. This includes those of Malay, Chinese, and Indian heritage, along with other Bumiputras, such as the Orang Asli, Dayak, and Kadazan.

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CHAPTER 12

A Veneer of Unity? Islam and a Culture of Inclusion in Sabah

David J. Banks

Nations, their founding documents and ideologies, reflect hoped-for patterns of solidarity and interaction rather than the actual state of social relations within their borders. As such, they indeed imagine communities that do not presently exist.[1] Leaders sense a desire for progress toward social unity and exploit the longing for progress to enhance their popularity and careers in public life. Each generation has a set of policies that leaders set before their people as uniquely appropriate in the search for progress toward unity. Malaysia, from the Merdeka Constitution through several epochs of planning, has defined unity around the Malay *bumiputera* (children of the soil) core identity with its culture and values, even if that community is quite internally diverse. The history of Sabah, since its entry into Malaysia in 1963, has been an attempt to draw upon the *bumiputera* rights guaranteed in Article 153 of the Merdeka Constitution and later ideology of Malay sovereignty (*Ketuanan Melayu*) to create its own unity, but so far, this has been at the price of excluding most Chinese, Indian and other groups who are not racially and ethnically local, from entitlement to government jobs and many business contracts, even when individuals from these groups have resided there for several generations. Many feel that this state of affairs is not ideal, but no one knows how to change it without creating panic,

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violence and social conflict. This chapter considers behavioral expressions defining unity around the theme of Islam and some consequences that this has had so far in Sabah, East Malaysia.

In Sabah, Malay ethnicity, defined by speaking Malay as ancestral tongue and being Muslim, applies to a far smaller group, 11.5 percent, than in the peninsula, where Malays form over half the population, 50.4 percent.[2] Sabah's people are former and present speakers of a number of languages, including Kadazan-Dusun,[3] Bajau, Suluk-Tausug and Rungus. Each group has multiple and complex trade and kinship ties with peoples in the area. Some groups of boat people trade with Sulawesi and have ties to peoples whose trade extends to Myanmar. This linguistic diversity necessitated a new definition of bumiputera that could incorporate far more of the citizens of Malaysia in Sabah to an expanded Malay category. This new category also had to make it clear that some were not included. Chinese and Indians were thought able to swamp the Malays with their business acumen and cultural ties to homelands far away and were excluded. Sabah's politicians have also tried to maximize their distinctiveness and independence within Malaysia. They also feared that Malay migrants from the peninsula and peoples from the Philippines or Indonesia could also rob them of their *jus soli* rights. They needed a new definition of bumiputera that could serve these several purposes and also touch the hearts of those at the grassroots. In addition, informants from all groups express the feeling that there is something wrong with a society that has graded citizenship, and that the society should be moving toward a higher level of integration and equality between citizens, but they look with apprehension at attempts to make necessary changes to bring this about.

Looked at in the context of Malay and Malaysian nationalism, inclusion of non-Malay groups as equal citizens has been a long-contested problem going back to the world before World War II. Burhanuddin Al-Helmy (1911–1969) promoted Melayu Raya as a grand notion of a unified people within the cultural orbit of Malayness that would include peoples of Malaya, Indonesia and the Philippines. Burhanuddin did not directly address the issue of the Chinese and Indian minorities, but he implied that converts to Islam would receive better treatment. The Malayan Union proposals of 1946, in which non-Malay groups would be given equal rights in a new independent nation because they either were born within its borders or had lived there for a sufficient length of time, led to riots. These Agreements placed the sultans under the control of the Malay citizens (*rakyat*), a separate people (*kebangsaan*), an agglutination

of *bangsa* or race. Under the later Federation Agreement, sultans would have their power restricted to Islam and Malay culture.

Political Background of Unity in Sabah

Islam in Sabah before the colonial era had been centered in local sultanates, vicegerents of the faith in the area, even when it had few adherents. The northeast region of Borneo that is now Sabah was between two centers of Islamic power: the Sultanates of Brunei, a port enclave to the southwest, and Sulu, founded by an Arab adventurer from Johore in the fifteenth century, with its capital in Jolo in the Sulu Sea. Neither exerted much control over the Sabah area of Borneo, and when the British entered in the 1880s, they found a number of groups competing for control. Islam formed a significant focal point of anti-British resistance. The Mat Salleh rebellion (1894–1900) against British changes in licensing and use of lands for tobacco had a violent denouement and earned Islam a central position in the resistance to colonial expansion. The British administration took advantage of Sabah's cultural diversity to practice divide and conquer. They had more trouble with Islam's themes of unity and *jihād*.

Colonial and postcolonial writers from the West thought of Borneo as a kind of savage frontier of competing tribes. They did not provide a framework for unity. In his Malayan Monochromes (1913), Hugh Clifford wrote of Murut headhunters who dared to inflict hideous punishments upon Europeans.[4] W. Somerset Maugham (1952) wrote several stories about Sabah. His characters included introverted Europeans who regarded locals as a painful price of Empire. Cohn, in his treatment of the British in India, shows that colonialism and its "investigative modalities" (p. 4) imposed epistemological spaces in the minds of its subjects that lowered their self-esteem and discouraged cooperation between groups. Anthropological writings on Borneo in the second half of the twentieth century tended to reveal unifying local themes related to group solidarity and the subtle interweaving of Muslim themes in local cultures in Borneo.[5]

After the Malayan Union, Malay politicians focused upon *bangsa* and *kebangsaan*, both with strong racial content and implications (see esp. Arifin: 53–56).[6] The Federation of Malaya Agreement buried the ideas of Burhanuddin and his Parti Kebangsaan Melayu. Burhanuddin's conception had less support than these racialized conceptions. He was regarded as a dreamer, even in Sabah, where diversity made his conceptions seem more appropriate. His call for equal participation for all resident groups,

including Chinese and Indians, placed him on the left or radical wing of the political spectrum closer to the Parti Kommunis Malaya than to UMNO, United Malays National Organization (*Pertubuhan Kebangsaan Melayu Bersatu*) (see Abdullah C. D., et al.). He later embraced the Parti Islam Se Malaysia (PAS, the Islamic Party of Malaysia) in 1956, becoming its president, on the eve of independence.

Sabah's stormy entry into Malaysia amidst opposition from the Philippines and Indonesia formed the background of the first administrations of Sabah. The Kota Kinabalu area of this research was less devastated by the Allied bombings than Sandakan, the former colonial capital. As Jesselton, Kota Kinabalu became the new headquarters of business and government after World War II. British support of Christian mission schools before Malaysian independence assured the presence of English language use in business. The Philippines had long claimed Sabah, since it inherited the Sultanate of Sulu. Despite these problems about its appropriate post-colonial affiliation, Britain took over the portfolio of the British Military Administration after the War and declared Sabah a Crown Colony in 1946. Britain denied calls for Sabah independence after the war and transferred the colony to Malaysia in 1963, gaining support for this from its Cobbold Commission, which was made up of prominent politicians from Malaya and Borneo and Lord Cobbold, Governor of the Bank of England.

Datuk Mustapha Harun, as Yang di-Pertua Negeri (governor) of Sabah (1963–1965), had a crucial role in focusing Sabah's state identity on Islam. He led the state into Malaysia and weathered conflicts with the Philippines and Indonesia but also was a fierce advocate of local autonomy, using Islam as expression of the unity of the state within Malaysia. His United Sabah National Organization (USNO) won the state elections of 1967. Mustapha later became Chief Minister of Sabah and remained in office until 1976, making his party part of the Barisan Nasional, the ruling coalition in Kuala Lumpur. Mustapha and USNO accused Christian missionaries and theologians from abroad of improperly meddling in Sabah politics and had these missionaries arrested and deported. Mustapha also organized mass conversions to Islam. His public conversions are well remembered by those who had come of age by the 1970s. Conversions were only one aspect of what some consider a continuing process of Islamicization in the Kota Kinabalu region, an area that had formerly been far more Christian. Mustapha also encouraged the use of the Malay language in formal and informal settings. One might even consider this movement toward the Malay language as a form of resistance. Those who can choose a parental tongue or English would rather speak Malay and

proudly declare that they learned Malay in school and it is the only language that they speak. They claim far less fluency in other languages. English is a colonial language and the other languages are pre-Islamic, Christian at best or reflecting the age of *jahiliah* (ignorance of divine guidance) when group conflicts were resolved through armed conflicts, headhunting and payment of fines (*sugit*).

The process of Sabah's entry into Malaysia always included the theme of local autonomy, with the peninsular states and the national government having rival rather than completely complementary interests. The development of ethnic organizations and parties did not unite the largest ethnic group, called variously Kadazan, Dusun, Murut or Pasok Momugun. They competed among themselves for the same membership base. Islam, which transcends ethnicity, became a useful organizing strategy for all of those classified as *bumiputera*, people of the soil, under the Malaysian Constitution through an amendment of 1963.[7] The law made both local Muslims and non-Muslims *bumiputera*, but the espousal of state Islam was a strong sign to non-Muslims. State policies have tended to neglect indigenous Christians, even suspecting them of attempts to convert Malays.[8] Sabah residents also feared that Malays from the peninsula would come to dominate their state and accused the central government of encouraging illegal immigration of low-wage workers from the Philippines and Indonesia.[9] Mustapha's call expressed a desire to unite Sabah in a new Malay identity bonding Islam with use of the national language. Conversions continued after his departure.[10] Noted for his flamboyant displays of wealth, having his own state aircraft and his political independence, Mustapha once threatened to pull Sabah from Malaysia if Kuala Lumpur did not meet his demands for more local autonomy. A central demand was that the Sabah share of oil revenues should be higher than the federal government advised. The government set about finding a more tractable replacement for USNO and found it in Berjaya and its leader Harris Salleh, who defeated Mustapha in the 1976 polls. In 1990, USNO joined Berjaya in forming Sabah's UMNO with Mustapha Harun as its initial president. USNO disbanded in 1991.

Unity and Religious Ritual

Participants in Islamic rituals (ibadat) consider them uniquely appropriate expressions of social unity. In the past, virtually all of the ethnic groups in the region had religious rituals that lasted protracted periods and

included chanting, drumming and trance.[11] These expressive elements, so strongly represented in the cultures of the past, probably account for the confidence that people express about the appeal of chanting in the usual mosque prayer rituals and to the importance of other ingredients: a melodious azan, handshakes and hugging before dispersal. The local muezzins are heroes. One should not underestimate local conceptions of the merit of prayer for the salvation of individual souls and that group expressions of prayer unite participants in greater closeness to God.[12] Participants share a common interest in presenting their acts in this world as demonstrations of their religiosity and desire to love and present behaviors to their Lord. This resembles the appeal of Sufi group rituals that Woodward recorded for Java in the eighteenth and nineteenth centuries. Ethnographers of the twentieth century have recorded cooperation between Muslim and non-Muslim healers.[13]

The Mosques

Masjid Jamek in Ulu Putatan was the most frequently visited venue. This mosque serves a suburban community of over 8000 residents. It is said to be the oldest mosque in Sabah and perhaps the first that was ever constructed there, early in the nineteenth century, around 1810. Proximity to a local harboring area for light transport ships (*perahu*) and the traders, travelers and religious teachers who stopped there explain its early construction. Some who came stayed on and married into the local community, making the area ethnically diverse and cosmopolitan. Students of local history suggest that the tradition of chanting (*berzikir*, to praise Allah and *berzanji*, to praise the Prophet Muhammad) was one of the patterns that took root early. Rotation of the duties of imam and siak (who maintains the mosque) also dates from the earliest periods.[14] Local scholars have kept records of the names and activities of prominent imams in the twentieth century. The school adjoining the mosque was constructed in 1964 and was gradually expanded to include the land and façade of the original mosque while a newer building replaced this mosque in 1971. The old prayer hall is now an assembly hall for students in the religious school. The first principal of the school was a woman from Perak who led 140 students.

The mosque and the connected school are located on Jalan Putatan Ramayah, about one half mile from its intersection with the larger thoroughfare, Jalan Putatan. People living in the vicinity of the masjid have

a range of livelihoods including retail, construction, white-collar occupations and teaching. This is a modest suburban neighborhood containing few impressive dwellings. Aerial photographs reveal that many acres landscaped for paddy have returned to grasslands. Paddy was formerly a much more common and lucrative livelihood before imports drove the local rice economy further into the hinterland. Masjid Jamek's main prayer hall is about 50′ by 50′, with a veranda in the rear and two additional verandas, one on either side. The one on the right adjoining the niche (*mihrab*) is an entrance area used for Friday prayers' overflow and the one on the left is for women, with a movable curtain on its front and sides to shield worshippers from view.

Along the niche wall are the mimbar and the masjid clock. This clock is a high-tech digital item costing about RM3000. It blinks when it is time for the azan and lists prayer times beneath the time display. On the left side of the clock, there is a listing of the five prayer times. Periodically, the mosques of Sabah distribute rolled-up posters listing the prayer times for the entire solar year. Floors of Sabah mosques are carpeted wall to wall with wool in the central prayer areas. Interiors have air conditioning and sliding doors for energy efficiency. There are overhead lights for dawn, sunset and night prayers and microphones so that the recitations echo throughout the buildings, its chambers and vestibules. The outer areas of all mosques have ceramic tile floors. Bulletin boards display the list of imams and the muezzins (*bilal*) officiating at the mosque by the day. The mosque organizing committee (*majlis*) makes these assignments. One imam usually officiates at all of the prayers for a day. Several muezzin may share responsibilities for a day. The bilal is trusted to show up so that the call to prayer is made properly and on time. But if he does not, then anyone may preside who knows the correct phrases in Arabic.

The Masjid Negeri (State Mosque) is located in the nearby township of Sembulan. This mosque was completed in 1974 and adjoins the Shariah Court for Kota Kinabalu, part of the Wisma Muis structure nearby. It is a domed, six-sided structure with a minaret at one end and a tiled dome at the other. There is a large parking field located between the mosque and Wisma Muis shopping and administrative area. Those coming by taxi or being dropped off may enter from a lane on the opposite side of the mosque than the parking area. This lane connects the two perpendicular highways, Jalan Tunku Abdul Rahman and Jalan Sembulan. As one enters from the lane, there are stone slabs for shoe deposit and men's and wom-

en's areas for ablutions. From there, one can continue down a hallway to the other side, adjacent the parking area, where stairs lead up to the main hall that is over 80′ square. There is a separate space on this level for women's prayers. Speakers take the sounds of the main area to the women's space. On the walls on the entry level are posters telling the schedule of talks by *ustaz* (religious teachers) for the next month and classes in *fikah* (religious law) and other religious subjects as well as Arabic for help in Qur'an study, recitation and conversation. This mosque also has a spiral staircase leading between levels. The entry level contains a prayer hall facing the kiblat and a line of carpets for group prayers. Latecomers can join groups there. It was usual to see ten to 20 men in line there for an unscheduled service (*solat jemaah*). Latecomers and reclining men and women are asked to leave after Isha prayers. The masjid is closed and locked before 8:00 pm nightly unless there is other business such as a late night class.

Two mosques serve downtown Kota Kinabalu. Masjid Al Aman is located in the Sinsuran section, next to the Philippine Market, an outdoor market with take-home and eat-at-table local foods. Tourist guides direct visitors here to get local cakes (*kuih muih*), fruits, vegetables and fish. The market overlooks the sea, as does the masjid adjoining it. One reaches this almost hidden mosque and the Philippine Market by crossing the handicrafts markets that lie in the direction of the center of town, where there are hotels for locals and budget travelers. Luxury hotels are found on an adjoining peninsula. Sinsuran is the banking center of Kota Kinabalu, and this makes the mosque an easy place to pray when doing business or shopping. Masjid Al Aman was recently upgraded from prayer hall (*surau*) to full masjid status and its facilities improved. The areas surrounding this mosque have a dreamy appearance, and some worshipers take their required ablutions (*wuduk*) a second time after gazing at the glassy sea beyond, as if the view disturbed their concentration and thoughts of prayer to Allah. There is also the Masjid Bandar on the hill slightly inland, next to the Padang Merdeka, a field that hosts sporting events and speakers. This mosque requires worshipers to climb a rather steep winding path. The imams there are welcoming and sometimes Chinese, gaining it the informal title the Chinese Mosque. Its interior is about as large as other 40-person-row mosques but smaller than the Masjid Negeri. Making the trek up to pray is serious exercise (Fig. 12.1).

Participants

Attendance varies based upon circumstantial factors like the unemployment level. Sabah has a high unemployment rate, and this is a bone of contention with the federal government, which is accused of allowing an open border in the south for cheap labor entrants. Unemployed and underemployed people come to ritual prayers as do those who can get away from their jobs long enough to participate in a prayer service. Retirees are a conspicuous feature of all services, sometimes making up as many as half of the participants. At zohor prayers scheduled around the noon hour, there was sometimes a rush of a few dozen late arrivals from work. If they are too late for the service, they can have a group service (*solat jamaah*) of their own, led by an older or more experienced participant, who stands in front of the group. These late rituals are held in the same space but several

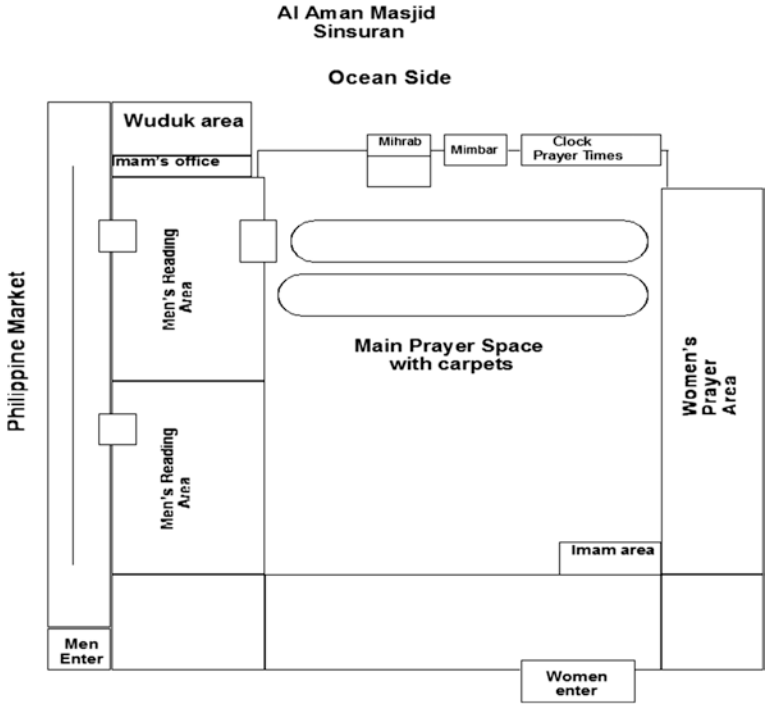

Fig. 12.1 Al Aman Masjid Sinsuran

rows back from the mimbar or on another level. Women's attendance is lower because of their duties in the home and the traditions that make housework and child rearing prior responsibilities, yet there are places for them in the mosques, either behind a curtain or in a balcony space. Women's attendance is rarely more than one-tenth of that of men. Lonely women are thought to come more often to the masjid but should not appear to be looking for partners.

The holy month of Ramadan increases turnouts. Attendance at all services increases, even at the dawn service. This month is a time of taubat, an asking of forgiveness for sins committed during the previous year, a time when one can renew faith, as in *umrah*, the small hajj. Perfect or near-perfect attendance at masjid functions as well as performance of all five required prayers is thought to make up for the laxities of the rest of the year and to bring increased spiritual reward. Practical considerations are also important. The food industry, which in other months opens or prepares foods for meals before Maghrib prayers and *iftar* (end of fasting), releases workers for mosque attendance. Some restaurants close for the month until after the Eid break, while others continue on with a staff that appear after Asar or the mid-afternoon prayers between 3:30 and 4:00 pm so that they can open for *iftar*. Other businesses will also be more tolerant of mosque attendance rather than demand that their employees use provided prayer spaces at the workplace. Qur'an recitations at all mosques bring out the largest attendances for the Isyak prayers between 7:00 and 7:30 pm. Attendance at prayers before tarawih recitation is thought far more meritorious, so the swollen attendance begins to thin after the first ten of the 21 rukuk of tarawih and the following three ruluk witir prayer.

The Officials

The Majlis Ugama assigns imams to each mosque. When Al Aman in Sinsuran was a surau and not a full masjid, the officiating imams were reluctant to give their full names. Of course, now that it is a full masjid, the officials, imams and bilals are listed on a poster beside the entrance. They used nicknames (*timang-timangan*) instead of those on their identity cards. Pak Haji Ulit urged me to use these names in addressing them. Tok Imam is also an appropriate form of address but they preferred Pak Ulit (the crooner) or, for another, Pak Bilal (the muezzin) or Abdullah (the faithful). These were not their given names. All had taken the Hajj

to Mecca. The first was described by some of those attending as not particularly clear in his pronunciation of Arabic phrases from the Qur'an. He is in his 70s or beyond. Abdullah is shorter than my 5′ 8″ and Haji Ulit is about the same height. Pak Bilal, although not a *hafiz*, is far clearer in his patterns of articulation of Arabic, and his recitations are thought beautiful. He is in his 30s. When he is officiating, there are sighs of approval from those assembled for prayer when they hear his Arabic.

The most frequent imam at Masjid Jamek is also the principal at the adjoining Muslim school. He is a man of about 83 years of age, hale and hardy, a retired fisherman, who has been active in the fisherman's union. He has an expansive personality and will answer questions about personal problems after services. He cannot recite the entire Qur'an from memory (*hafiz*), but that is not required for the Ramadan terawih Qur'an readings during Ramadan as will be clear from the following discussion. He usually attends wearing a gray (*jubah*) and a red cap (kufi), but wore all-white for Ramadan. He drives a car that has seen better days. The imam drives guests here and there if need be and drove some or his worshipers to his family home nearby to eat Eid cakes and share a brief meal.

Services

All services share certain features, some typical of all Shāfi'i services but others that are uniquely local. These are standard Sunni Muslim practices worldwide, but what makes this Shāfi'i variant unique is in several features which follow the final *taslim* (*salam* to the right and left of the worshiper's prayer line (*saf*)). Those attending can leave at this point, but many stay for the imam's informal prayer (*doa*), usually in Arabic. There are prayers for the community and attendees. Some of those attending rise and leave, being careful not to disturb those who have begun voluntary or make-up (*qada*) prayers for earlier prayer obligations not fulfilled. The Jumaat ceremony differs from normal zohor prayer sessions in that in includes a talk (or khutbah) of about 20–25 minutes in two parts, with the imam sitting at the pulpit (mimbar) located in the direction of Mecca. Both must contain Arabic phrases. The imam sits briefly between sections. *Jabatan Kemajuan Islam Malaysia* (JAKIM), Department of Islamic Development Malaysia, provides a text that the imam may read from the *mimbar*. Topics include national problems in addition to moral or theological questions. These khutbah echo the government's political line of Islam Hadhari (roughly, Civilized Islam); however, changes in the pace of the talk, improvisations on the

topic rather than a strict reading of the script were usual.[15] The imam might even take off into a slightly different direction than the printed text. The texts of the sermons include Arabic insertions from the Qur'an and Sunna of Islam. The sermons during the research period urged people to take a more modern and tolerant view of many issues such as AIDS, which has infected about 87,000 Malaysians, of whom 70 percent are Muslims.[16]

It is well to consider the themes of the official khutbah that are posted on the JAKIM website each week. These speeches are delivered in Malay but introduced in Arabic, a requirement of the Shāfi'i *madhhab*. Their themes quite often discuss issues related to national unity and the rights of Malaysian citizens. There are, however, important silences. For example, the September 17, 2010 speech concerned visiting others who are morally upright. Another speech (October 8, 2010) emphasized the use of the Malay language as a unifier in the country as Arabic had been in the time of Muhammad when Arabic competed with other local languages in Arabia. The khutbah of October 22, 2010 and November 5, 2010 present a heroic role for government in promoting social unity under shared positive social values. These sermons emphasize wealth as expression of virtuous occupations and livelihoods and not heedless greed. A khutbah on Sharia as a Channel for National Prosperity (August 31, 2012) spells out major areas of Islamic law that Malaysians generally share: elimination of drunkenness, fornication, sodomy, lesbianism, male homosexuality and bisexuality because these destroy the fabric of society as does illegal usury. People should want a government that guarantees Islamic virtues that provide a framework for faith in God. The khutbah of January 13, 2013 explains the government position on the use of the phrase Allah by other religions. Other religions have not found the word in their sacred texts and this word is embedded in the total Islamic religious experience. The phrase is not merely a word for the Divine.

These khutbah always keep the identity of the Malaysian government separate from that of Islam. This implies that it is possible for an advisory relationship to exist between the two or for there to be even a difference of opinion about a specific issue. Khutbah that recognize and advocate complete equality within the faith and that the faith advocates might suggest to some that secular equality is also a requirement of the faith. These speeches stop short of an advocacy role and remain silent on questions that imply criticism of the government and the Malaysian Constitution. This implies that protection of the faith is the proper role of the state. We should think that the entry of many into the Islamic fold under the mass

conversions of Datuk Mustapha Harun. The continuing conversions after that period may also suggest that the government was preparing for an era of greater equality for all groups. Whatever one's prediction of Malaysia's future, being part of the same religious community is thought by many to be salubrious and useful for business and social relationships outside the mosque.

Now the less formal rituals, the phrases (called *tasbih*) for zikir begin. Remembering God is divinely inspired and lavishly rewarded in the afterlife and in the present. It also is thought to bring one closer to their Lord. One achieves a heightened spiritual state (*maqam*), a kind of ecstasy, that those not participating do not. About half of those attending the prayer service stay, sitting with legs crossed (*bersila*). The imam recites the tasbih phrases, or he may recite them while using prayer beads. The phrases are: Subhan Allah (Glory to God), Al Hamdulillah (Praise to God) and Allahu Akhbar (God is Greater), repeated 33 times each using beads. No more than 10 percent of those present bring beads. The rest count on their fingers. After this, the imam begins his *doa* prayers and the assembled sit with hands extended upward, palms toward the face but not touching the skin (*angkat dua tangan ka atas*). After this, the group recites the Fatihah, al Ikhlas or another brief *surah*. Each service should raise the group attending to a spiritual state that will sustain them until the next one that they attend. Prophetic traditions grant 27 times the merit (*pahala*) for group prayers.[17]

Following the tasbih recitations and doa, the assembled rise and get in line to shake hands. This is a joyous event in which some may approach the imam directly and shake his hand. There are two sorts of handshakes. One involves both hands to cup the hands of the partner and then draws them into the chest as if to suggest the heart (*kalbu*). The other is a simple right-hand shake, which may be accompanied by a pat on the back or other hug and even a kiss on the cheek. Using the right hand encourages a clockwise formation. Not all of those attending can be part of one circle or line if there are hundreds of people attending, but smaller circles form in other areas of the prayer space and in the veranda so that everyone attending shakes hands with several other people before retiring. Often, when one leaves a mosque, the imam is still chanting while he shakes hands with those attending who are about to leave. Those present sigh in agreement and chant along with the imam in medium volume. This increases the enthusiasm of the hand-shaking ceremony following the general dispersal (*bersurai*).

Chanting During Ramadan

Ramadan and its fasting and prayer attendance are the culminating ritual of the year that can bring forgiveness for all sins as can the Hajj. The feasting after Ramadan during the Eid is also a time for extending camaraderie beyond the borders of Islam to all relatives, friends and neighbors. Tarawih Qur'an recitation services during Ramadan include chanting and repetition of well-known surah of the Qur'an interspersed with rhythmic chants from the Qur'an and hadith. Since there is often no hafiz who can recite the entire Qur'an from memory, they can either have someone read from a written text or recite from the final section (*juz*) of the Qur'an in predetermined orders depending upon the night. The mosque committee (majlis) makes posters of Arabic phrases for *zikir* (remembrances) to be recited during the periods between *rukuk*. A committee of four men sits before the posters and leads the group chants. Others present who know these phrases join them.[18]

Those attending *terawih* wear their most formal religious attire. This includes *baju Melayu* (a shirt with two pockets in the front) and pants underneath as well as a *kopiah* (skull cap) or *songkok* and even a full turban. There are also those wearing jubah, the long Arabic robe or a smaller version of that robe, reaching only beneath the knees, wearing pants underneath. These outfits contribute to the overall atmosphere of expectation. Of the ten tarawih that I attended during the second half of Ramadan, all lasted approximately one hour until the Witr solat, which lasted another ten minutes. None lasted longer than one-and-a-half hours, even those in which there was a hafiz and full recitation of a juz.

In each of the halves of Ramadan, the tarawih contains ten cycles of two rukuk, with each second rukuk followed by a full closing of prayer (tahiyat akhir) with an audible *taslim* toward the right and left of worshippers. Each cycle in the second 15 days begins with the Fatihah and then Al Qadr followed by the Fatihah and another verse from the final 12 verses beginning with Al Takasur (The Piling Up) and concluding with Al Masad (The Palm Fiber). The final three surah are recited in the third *rukuk* of the *witr*, and a final three *rukuk* prayer concludes the evening. In the *witr*, the first *rukuk* should contain the Fatihah and the Surah Al A'la (The Most High), while the second *rukuk* should contain Surah Al Kafirun. The third *rukuk* contains al-Ikhlas, al-Falaq and an-Nas. After the tahiyat akhir, the group stands (*Iktidal*) to recite the Qunut, a *doa* beseeching God's mercy and graciousness, as in the past. Worshipers raise themselves

to the standing position after rukuk. They then recite *Sami allahu liman hamidah*, but instead of prostrating themselves in sujud, the imam recites the Qunut, with worshippers replying *amin* to each of its phrases. Then they depart with handshakes.

Veneer or a Frontier for Change

There are no useful statistics available on the numbers of Chinese and Indian converts to Islam in Sabah or of conversion rates. One observes people who are clearly not Malay at services all over Kota Kinabalu, but they rarely are more than ten or 20 in a group numbering in the hundreds. I recall inviting a Chinese cabbie to prayers after he had told me the long story of his wife's childlessness and eventual conception and birth after over a decade of marriage. The story brought tears to his eyes. We went to the Masjid Negeri and prayed together. For at least some, Islam extends a welcome that reaches beyond their Malay identity. Informants also pointed to friendly business contacts between groups. The Islamic court does a steady stream of conversions and issues Muslim identity cards. I was told that subtle and informal changes are coming about, perhaps benefitting Chinese and Indian converts and immigrant group Muslims, especially those with Malay relatives by marriage or descent. No informants thought that there was any immanent fundamental change in the Malaysian Constitution that would make these informal behaviors requirements under national or state law. The case for *bumiputera* affirmative action is still strong. The contracts and positions that a small number of *bumiputera* get under this policy does not change the far greater likelihood that they be indigent than Chinese or Indians in Sabah. There is also intrinsic worth in feelings of belonging that extend beyond one's ethnic group. Despite the social world that JAKIM discusses in its weekly khutbah, my informants considered that beyond their level of responsibility. Religious observance is a benefit of Malaysian citizenship. All are welcome at services, and many from other countries use Sabah as a place of religious vacationing.

Is Kota Kinabalu Islam a Minimal Religion?

Can conversion, expressive services, inviting others to participate in common Muslim rituals and the visiting and good feelings during the Eid after

Ramadan achieve a more equal citizenship for all Malaysians of Sabah or is this a mere show or a mere veneer atop disunity? Victor Turner discusses instances in which general antistructural solidarity, which he calls communitas, receives emphasis, during carnivals and other special ritualized events, suggesting that underlying elements can unite nations and larger units, such as Christendom.[19] National anthems encourage our devotion, without regard to our ethnic status within the nation. National leaders are quick to build on temporary consensuses to support economic adventures and wars. Turner rarely considers rituals as vehicles for social transformation, and none of my informants, whether Muslims or non-Muslims, *bumiputera* or not, thought that there is an impending change that will gain eligibility to Malay privileges beyond the usual borders or that Islam demands such a change. Sabah's use of Islamic ritual as a building block of mass solidarity based on good feeling and love (*muhibah*) might merely reflect a new expression of *ketuanan Melayu* (roughly Malay lordliness), a concept that has emerged in the first decade of the new millennium to express the charter for Malay rule. Islam has certainly united Muslim *bumiputera* in Sabah and encouraged *bumiputera* conversions. Several Muslim informants expressed concern about what they called the political conversions of the 1970s. They preferred subtler processes that encouraged gradual movement in the direction of Islam even though an association located in the Wisma, Saudara Islam (Islamic Brotherhood), tries to continue the spirit of Mustapha's conversions. They did think, however, that this good feeling between groups is applying a steady pressure from below for the leaders to continually rethink citizenship issues.

This resembles the religiosity that Mikhail Epstein discusses for Russia in the 1970s. This is religiosity that the individual uses to suit her own needs. Although it is a minimal or poor religion, its poverty includes the five rukun of faith: profession of faith, prayer, fasting, alms and pilgrimage. Even here there were differences among informants. Some believed that pilgrimage was good if done in the correct spirit of poverty and surrender, while others thought it was excessive. Individuals who were keen to make up missed prayers were also critical of those who used pilgrimages (hadj and umrah) for show and not to transform themselves into more austere and complete believers. There are several scholarly bookstores that sell popular literature on Islam and classics on the Islamic experience from earlier centuries. These volumes talk about prayer as an epiphany, and sermons urge the believer to pray as if prayer is an important task that takes account of all of the stresses of the moment and places them in the context

of the *akhirat*, Day of Judgment of their own life, when God will weigh their deeds.

My informants were interested to tell me personal experiences in which people had unexpected epiphanies of faith when they had sudden visions or experiences that validated their behaviors. Prayer is an obligatory set of behaviors that bring one closer to God. One informant said: "I pray so that I can pray." She meant that many of the enormous number of personal prayers are less involving than others and that the most emotionally powerful prayer experiences happen at unpredictable times and places. These experiences help them to overcome a period of personal crisis. Prayer is not about making contacts, as is frequently said of Christianity. Rather, religious observance is about experience beyond the limits of life.

The primacy of personal religious experience is an important reason that emphasis upon unity in its various forms does not result in radical social change. Feeling united and equal before God does not require a specific political agenda. There is little discussion of the total social systems that the mosques and other participants inhabit. Externalizing to administrative and scholarly worlds of Islam in favor of internal religiosity seems to liberate believers from discussion of and conflicts over government policy. One may compare this aspect of Sabah's Islam to the minimal religion discussed in Russian postmodernism literature. In Minimal religion, people use religion to sooth their souls and to feel that they are doing as much as they can to help their brothers and sisters both within and beyond the boundaries of their formal faith. However, prayer and mosque attendance are a kind of bandage that covers a deep-seated feeling that something more needs doing. What could this possibly be? Islam emphasizes life as struggle (*jihād*) and looking for alternatives within the sacred law. Personal experience and struggle find expression in the voluntary participation in chanting rituals and individual innovation in such rituals. People in attendance are informed that they can use their mosque as a tool for learning and that they must respect the emotional expressions of others. Government control of the content of the sermons also has the effect of distancing those in attendance from the mimbar and focuses their attention on optional prayers and browsing in the masjid library or reading passages with others. Group study and prayer are demonstrations of individual struggle.

Informants also know about the forbidden shamanic cults, cults that converts to Islam reject. These cults sometimes involved the use of human heads, collected in hostile raids. They noted that group expres-

sions of religion can be violent and forbidden in Islam. On the other hand, charitable activities such as collections of funds for kids who cannot afford school uniforms or fees can be group initiatives that use the masjid as home base. Prayer should always be accompanied by realistic efforts to bring hopes to fruition. This is called berikhtiar or bertawakal, and receives treatment in sermons. It is not enough to pray. Activities in the world are also requisite.

Moreover, informants discuss their obligation to regard members of non-bumiputera groups as fully human, with names, and social and personal problems. One is required to help them in their honorable endeavors, and this will compensate for their inability to cross the barriers placed in their path by the Merdeka Constitution. Informants mention the close efforts to work together in business with other community members and to recognize shared kin. Marriages across ethnic lines should encourage greater complementary behaviors and feelings. Muslim informants noted that they try to shop in stores that employ or are owned by relatives by marriage. These relatives may eventually decide to enter Islam, but this is not crucial. Sabah Muslims also are proud that the Chinese community and the Indian community are not as separate from them as these communities often are on the mainland. Chinese people are far more likely to speak to one in flawless Malay in Sabah than they are in Kuala Lumpur. Although there is no current push among Sabah's Muslims to end Malay privileges, they are probably more willing to accept and even welcome such a change than Malays in the peninsula.

Notes

1. Anderson's treatise on the role of nationalist politics in Indonesia and other countries states the case as a fact of world political life.
2. Wikipedia pages for Sabah and Malaysia give these statistics from the 2010 censuses.
3. Roff (1969, 1974), Reid (1997) and Wah (1992) chronicle the decline of powerful nationalist expressions among these groups in the period since entry into Malaysia.
4. Clifford, as a resident of Pahang from 1896 to 1900, sought to impose British rule through negotiations with the weak Sultan and pitched battles with his rural supporters. Clifford served briefly as Governor of North Borneo (1900–1901). Maugham's (1952) writings are about the Malaysia and Singapore of the 1920s and 1930s.

5. Appel and Appel discuss Rungus and Bulusu' spirit mediums and their use of Islamic ideas and conceptions.
6. Ariffin Omar's Bangsa Melayu, 1993, discusses Burhanuddin's conceptions of cultural unity in the region, which he hoped would operate to bring Malaya together with territories in Indonesia. Farish A. Noor (2002, pp. 68–72) considers Dr. Burhanuddin's Islam to be a refreshing progressive version that eschewed fanaticism in favor of seeking a place for Muslims in the modern world. He notes that this founder of the Pan-Malayan Islamic Party (PAS) is often forgotten within that powerful party today. Burhanuddin's ideas and policies form a major part of his history of PAS and left a legacy of potential future divisiveness.
7. The addition of Art. 161: "If one of the parents is a Muslim Malay or indigenous native of Sabah as stated in Article 161A (6)(b) Federal Constitution of Malaysia; thus his child is considered as a Bumiputera."
8. See Christianity in Malaysia—Wikipedia http://en.wikipedia.org/wiki/Christianity_in_Malaysia#Evangelism.
9. See Sadiq (2005).
10. See Chandra Muzaffar, Islamic Resurgence in Malaysia, Petaling Jaya, Selangor: Fajar Bakti, 1987, for a discussion of the phenomenon. My article on Keris Mas' novels of Islam in Pahang presents that author's surprise at the new interest in prayer and making all five every day rather than praying on impulse, a usual pattern before resurgence.
11. See The Seen and the Unseen: Shamanism, Mediumship and Possession in Borneo for a description of Rungus rundukan, pp. 22–23. Azra discusses the spread of Islam to Borneo.
12. See Saba Mahmood's treatment of women's mosque movement in Cairo and the moral implications of prayer for personal piety and its repercussions in groups beyond the praying individual. "The condition of piety was described by the mosque participants I knew as the quality of 'being close to God': a manner of being and acting that suffused all of one's acts, both religious and worldly in character." p. 830. Henkal discusses the prayer ritual as a common medium through which believers exchange views even about matters that imply secularism.
13. Appel and Appel in "The Seen and the Unseen" section on the Bulusu' of East Kalimantan show this cooperation, pp. 68, 74, 81. See also Charles (2003).

14. See Putatan Sekilas Sejarah Islam, http://abdnaddin.blogspot.com/2008/11/sekilas-sejarah-islam-di-putatan.html. Mereka terus bermastautin turun temurun di Putatan sehingga ke hari ini. "Di antara peniaga yang datang pada abad ke-19 itu, terdapat mereka yang memiliki sedikit sebanyak ilmu asas-asas agama seperti mengaji muqaddam al-Quran, kitab perukunan, berzanji dan apa saja ilmu agama yang ada pada mereka lalu diperturunkan pada orang-orang tempatan," kata Allayharham yang juga merupakan Tokoh Maal Hijrah 2003 ini. Also see Buyong (1995).
15. JAKIM distributes the text of the talks in Malay over the internet as they are given. They express official Malaysian attitudes toward Islamic responsibilities.
16. The title of this khutbah was Menyambung Kasih Ilahi, HIV AIDS Ditangani (roughly, Add to God's Love, HIV AIDS).
17. See esp. Mohd. Uzair Taufik, who cites al Bukhari and al Muslim hadith collections p. 216.
18. There is a widely available guide to the chants and their meanings together with the nights that they are to be used: Panduan Solat Tarawih, amalan Sepangng Ramadhan & Awal Syawal (2009).
19. See Turner (1969, 1974, 1982) deal with rituals as unifying features of social orders, real and imagined. See 1982 for a full discussion of communitas, pp. 205–206.

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